

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**COPY**

-----X  
JAMIE SHIPPING INC., PUFFIN MARINE  
INVESTMENTS SA and BANK MANDIRI  
(EUROPE) LTD., UK,

Case No.: 08 CV 6882(JFK)

Plaintiffs,

- against -

**AFFIDAVIT OF  
CHRISTOPHER CARLSEN  
IN SUPPORT OF ORDER TO  
SHOW CAUSE**

OMAN INSURANCE COMPANY,

Defendant.  
-----X

CHRISTOPHER CARLSEN, being first duly sworn, deposes and states as follows:

1. I am a member of the law firm of Clyde & Co US LLP, attorneys for defendant Oman Insurance Company ("OIC") in this litigation. I submit this affidavit in support of OIC's motion, pursuant to Rules E(4)(f) and (5)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions (Supplemental Rules"), and Local Admiralty and Maritime Rule E.1 of the Southern District of New York, to compel plaintiffs to accept OIC's proffered irrevocable letter of credit as substitute security for the \$3,558,738.50 in funds they have attached pursuant to the *Ex Parte* Order for Process of Maritime Attachment and Garnishment issued by the Court in this case on July 31, 2008 (the "Attachment Order").

2. OIC brings this motion by way of Order to Show Cause, rather than by notice of motion, because the attachment has deprived it of the use of this significant sum of money, resulting in continuing disruption to its business activities. Moreover, Rule E.1 of the Local Admiralty and Maritime Rules provides that the "prompt hearing" to which OIC is entitled under Supplemental Rule E(4)(f) "shall be conducted by a judicial officer within three court days, unless otherwise ordered." OIC has not made a previous application for similar relief.



3. Plaintiffs Jamie Shipping Inc., Puffin Marine Investments S.A., and Bank Mandiri (Europe) Ltd., UK, commenced this action on or about July 30, 2008, claiming damages based upon OIC's alleged wrongful failure to pay money due to plaintiffs under a policy of marine hull insurance. A copy of plaintiffs' Verified Complaint is attached hereto as Exhibit "A."

4. The subject marine hull insurance policy contains a clause providing that the insurance is subject to the exclusive jurisdiction of the "English Courts, Law and Practice." *See* Verified Complaint, ¶17, and the "Jurisdiction" clause in the policy attached as Exhibit 1 thereto.

5. In accordance with the exclusive jurisdiction clause in the insurance policy, plaintiffs have commenced proceedings against OIC in the High Court of London with respect to the claims described in the Verified Complaint. *See* Verified Complaint, ¶¶ 18-20.

6. Plaintiffs commenced this litigation in order to obtain jurisdiction over OIC and also to obtain security for their claims and in aid of the London High Court Proceedings. *Id.*, ¶ 22.

7. On July 31, 2008, plaintiffs obtained from the Court the Attachment Order pursuant to Rule B of the Supplemental Rules. A copy of the Attachment Order is attached hereto as Exhibit "B."

8. Thereafter, plaintiffs served the Attachment Order on various garnishee banks within the Southern District of New York, resulting in the attachment \$3,558,738.50. *See* Letter from Plaintiff's Counsel dated August 19, 2008, a copy of which is attached hereto as Exhibit "C" (advising that plaintiff's claims have been "fully secured by way of Oman Insurance Company property that has been attached in New York.").

9. On August 11, 2008, Dubai based counsel for OIC requested that plaintiffs accept a bank guarantee issued by Mashreq Bank as substitute security for the funds attached pursuant to the Attachment Order. On August 13, 2008, London based counsel for plaintiffs rejected this



proposed alternate security, advising that the plaintiffs "would prefer to remain secured via cash funds." Copies of the email correspondence between counsel are attached hereto as Exhibit "D."

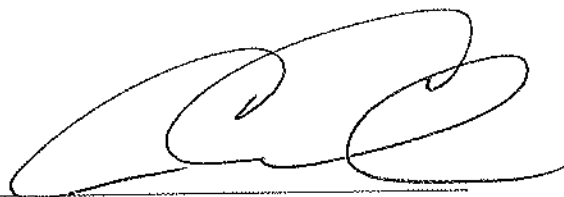
10. On August 19, 2008, OIC again offered, pursuant to Supplemental Rule E(5), to post substitute security in the form of an irrevocable letter of credit issued by Mashraq Bank, and provided plaintiff the wording of the letter credit that Mashreq Bank was prepared to issue. Copies of the correspondence and proposed letter of credit are attached hereto as Exhibit "E."

11. On August 20, 2008, plaintiff's New York based counsel confirmed to me by telephone that plaintiffs will not agree to accept a letter of credit as substitute security for the attached funds. Plaintiffs maintain that in the absence of the parties' agreement, only a surety bond may be compelled upon a Rule B plaintiff as substitute security under Supplemental Rule E(5). *See* August 19, 2008, letter from plaintiffs' counsel attached as Exhibit "C" hereto.

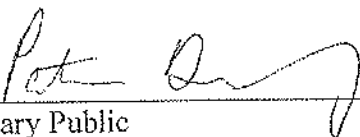
12. Mashreq Bank is headquartered in the United Arab Emirates with assets of approximately \$23 billion dollars. It has offices in both London and New York City, and its New York operation is supervised by the New York State Department of Banking. *See* Mashreq Bank and New York State Banking Department website information attached hereto as Exhibit "F."

13. A proposed draft Order is attached hereto as Exhibit "G."

Dated: August 22, 2008  
New York, New York

  
Christopher Carlsen

Sworn to before me this 22<sup>nd</sup> day of August, 2008

  
Notary Public

PATRICIA A. DONNELLY  
Notary Public, State of New York  
No. 01DO5087441  
Qualified in New York County  
Commission Expires Nov. 30, 2009



## **EXHIBIT A**



JUDGE KERNAN 08 CV 6882

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

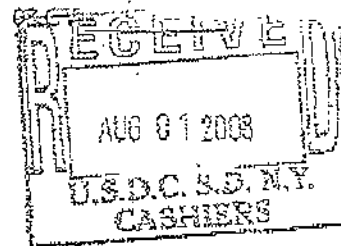
JAMIE SHIPPING INC., PUFFIN MARINE  
INVESTMENTS SA and BANK MANDIRI  
(EUROPE) LTD. UK,

Plaintiffs,

- against -

OMAN INSURANCE CO.,

Defendant.



VERIFIED COMPLAINT

Plaintiffs, JAMIE SHIPPING INC. (hereafter referred to as "JAMIE"), PUFFIN MARINE INVESTMENTS SA (hereafter referred to as "PUFFIN") and BANK MANDIRI (EUROPE) LTD. UK (hereafter referred to as "BANK MANDIRI") by and through their attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendant, OMAN INSURANCE CO. (hereafter referred to as "Defendant"), allege, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331.

2. At all times material to this action, Plaintiff JAMIE was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of the laws of Liberia and was the registered owner of the M/V CANADIAN CHALLENGER.

3. At all times material to this action, Plaintiff PUFFIN was, and still is, a foreign



corporation, or other business entity, organized under, and existing by virtue of the laws of Liberia and was the registered owner of the M/V AGATE ISLANDS.

4. As all times material to this action, Plaintiff BANK MANDIRI was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law with a place of business at Cardinal Court, 23 Thomas More Street, London, E1W 144, and was the mortgages of the M/V CANADIAN CHALLENGER and M/V AGATE ISLANDS.

5. Upon information and belief, Defendant was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law with a place of business at Dubai, United Arab Emirates and was the hull insurer of the M/V CANADIAN CHALLENGER and M/V AGATE ISLANDS.

6. Plaintiffs JAMIE and PUFFIN intended to tow their Vessels from Cuba to India for the Vessels there to be scrapped.

7. Plaintiffs JAMIE, PUFFIN and BANK MANDIRI (collectively "Plaintiffs") contracted with the Defendant for marine hull insurance for purposes of making good to the Plaintiffs as insureds, or to indemnify the insureds against, any loss, damage or liability to the Vessels during the voyage from Cuba to India. Defendant issued to Plaintiffs an insured policy of marine hull insurance (no. DMHP2006/0000221), and an attached Schedule thereto, so insuring the Vessels. *See a copy of Ocean Insurance Co. marine hull insurance policy attached hereto as Exhibit 1.*

8. The Vessel M/V CANADIAN CHALLENGER was insured for the sum of \$1,000,000.00. *See Exhibit 1.*

9. The Vessel M/V AGATE ISLANDS was insured for the sum of \$1,250,000.00. *See Exhibit 1.*



10. An amendment was incorporated into the insurance policy effective March 16, 2006 which provided as follows:

*"The name of the insured is changed to M/S Jamie Shipping Inc (as owners) and/or Bank Mandiri (Europe) Ltd., UK (as mortgages) [sic] for their respective rights and interests IRO vessel "CANADIAN CHALLENGER".*

*Puffin Marine Investments SA (as Owners) and/or Bank Mandiri (Europe) Ltd., UK (as mortgages) [sic] for their respective rights and interests IRO vessel "AGATE ISLANDS" [sic]."*

11. Subsequent to issuance of the aforesaid marine hull insurance policy, Plaintiffs JAMIE and PUFFIN, after carrying out necessary Vessel surveys and required Vessel repairs or modifications issued by surveyors following the surveys, commenced the towing of their Vessels as part of a convoy by the tug vessel RIG DELIVERER.

12. During the voyage from Cuba to India the convoy experienced heavy weather and the Vessels drifted together and collided on or about July 18, 2006. Subsequently, the Vessels continued to range alongside and make contact with one another causing considerable damage to each Vessel. The damages incurred to each Vessel caused by an insured peril of the sea led to the eventual sinking and complete loss of the M/V CANADIAN CHALLENGER on September 16, 2006.

13. After the M/V CANADIAN CHALLENGER sank, RIG DELIVERER and M/V AGATE ISLANDS put into Recife, where surveys were conducted and preparations made for the onward tow of M/V AGATE ISLANDS. On November 9, 2007, RIG DELIVERER and M/V AGATE ISLANDS departed from Recife, bound once more for Alang via South Africa. During this voyage, due to the damages incurred in the July 18, 2006 collision caused by an insured peril of the sea, the M/V AGATE ISLANDS sank and was completely lost off Durban on February 25, 2007.



14. Notwithstanding the obligation of Defendant OMAN as the marine hull insurer for the Vessels, OMAN has refused to issue payments to the Plaintiffs for the insured hull value of each Vessel.

15. Despite due and repeated demands, OMAN refuses to carry out its obligations as insurer and issue payment of the \$1,000,000.00 insured hull value of the M/V CANADIAN CHALLENGER and the \$1,250,000.00 insured hull value of the M/V AGATE ISLANDS.

16. Plaintiffs have complied with all terms and obligations as Insureds under the marine hull insurance policy.

17. The aforesaid marine hull insurance policy calls for all disputes arising thereunder to be resolved at the High Court in London pursuant to English law.

18. Plaintiffs LAMBE and BANK MANDIRI have commenced proceedings in the High Court of London against Defendant for recovery of the marine hull insurance proceeds due and payable for the sinking and complete loss of the M/V CANADIAN CHALLENGER. See copy of Reply (Incorporating Particulars of Claim and Defence) attached hereto as Exhibit 2. Such proceeds remain ongoing.

19. Plaintiffs PUFFIN and BANK MANDIRI are preparing to commence proceedings in the High Court of London against Defendant for recovery of the marine hull insurance proceeds due and payable for the sinking and complete loss of the M/V AGATE ISLANDS.

20. Plaintiffs PUFFIN and BANK MANDIRI specifically reserve their rights to resolve their dispute against Defendant in the High Court of London as per the marine hull insurance policy.



21. As a result of Defendant's breach of the marine hull insurance policy, Plaintiff has incurred damages in the approximate amount of \$2,250,000.00, exclusive of interest, costs and attorneys fees.

22. This action is brought in order to obtain jurisdiction over Defendant and also to obtain security for Plaintiffs' claims and in aid of London High Court proceedings.

23. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. As best as can now be estimated, Plaintiffs expect to recover the following amounts as the prevailing parties in London High Court proceedings:

A.	Principal claim -	\$2,250,000.00;
B.	Estimated interest on claim -	
	5 years at 7.0% compounded quarterly:	\$ 520,758.50;
C.	Estimated attorneys' fees and expenses:	\$ 788,000.00;
Total:		\$ 3,558,758.50

24. The Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendant has, or will have during the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendant. See affidavit of Anne C. LeYasseur annexed hereto as Exhibit 2.

25. The Plaintiffs seek an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the



Defendant held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendant and to secure the Plaintiffs' claims as described above.

WHEREFORE, Plaintiffs pray:

A. That process in due form of law issue against the Defendant, citing it to appear and answer under oath all and singular the matters alleged in the Complaint seeking which default judgment be entered against it;

B. That since the Defendant cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$3,358,738.50 belonging to, due or being transferred to, from, or for the benefit of the Defendant, including but not limited to such property as may be held, received or transferred in Defendant's name or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

D. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court;



E That in the alternative, this Court enter Judgment against the Defendant on the claims set forth herein;

G. That this Court award Plaintiff the attorneys' fees and costs incurred in this action; and

H That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: July 30, 2008  
New York, NY

The Plaintiffs  
JAMIE SHIPPING INC  
PUFFIN MARINE INVESTMENTS SA  
BANK MANDIRI (EUROPE) LTD. UK

By: Anne C. LeVasseur  
Kevin J. Lennon  
Anne C. LeVasseur  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Avenue, Suite 300  
New York, NY 10170  
(212) 490-5959 - phone  
(212) 490-6070 - facsimile  
[KL@LMLL.com](mailto:KL@LMLL.com)  
[zcl@lennon.com](mailto:zcl@lennon.com)



ATTORNEY'S VERIFICATION

State of New York     )  
                              )  
County of New York    ) ss.: City of New York

1. My name is Anne C. LeVasseur.
2. I am over 18 years of age, of sound mind, capable of making this Verification, and fully competent to testify to all matters stated herein.
3. I am an attorney in the firm of Lennon, Murphy & Lennon, LLC attorneys for the Plaintiff.
4. I have read the foregoing Verified Complaint and know the contents thereof and believe the same to be true and accurate to the best of my knowledge, information and belief.
5. The reason why this Verification is being made by the deponent and not by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now within this District.
6. The source of my knowledge and the grounds for my belief are the statements made, and the documents and information received from, the Plaintiff and agents and/or representatives of the Plaintiff.
7. I am authorized to make this Verification on behalf of the Plaintiff.

Dated: July 30, 2008  
New York, NY

Anne C. LeVasseur  
Anne C. LeVasseur



EXHIBIT 1











**SHARIF INSURANCE COMPANY (P.S.C.)** شركة بيمات للتأمين (م.م.ع.م.)

- EXCLUDES RADIOACTIVE CONTAMINATION, CHEMICAL, BIOLOGICAL, BIO-CHEMICAL AND ELECTROMAGNETIC WEAPONS EXCLUSION CLAUSE (IN/TWO).
- MARINE HULL ELECTRONIC DATA REGISTRATION INCORPORATED.
- CONTRACTS RIGHTS OF THIRD PARTIES) ACT 1999 EXCLUSION CLAUSE IN 2000/007.
- EXCLUDES DEBURRAGE AND ANY TUG DELAY PAYMENTS WHATSOEVER WHETHER UNDER THE TOWAGE GENERAL AVERAGE, SALVAGE, SUE & LABOUR OR ANY OTHER INSURED INTEREST.
- NECESSARY REPAIRS CLAUSE.
- EXCLUDING CLAIMS ARISING FROM PRIMARY TEACHING.
- ALL LIABILITY INTERESTS SUBJECT TO A COMBINED SINGLE LIMIT OF NET VALUE.

**EXPRESS WARRANTIES**

- WARRANTED TUG, TOWAGE AND BERTH TO BE APPROVED BY STAFF SURVEYOR OF EITHER LONDON OFFSHORE CONSULTANTS, FALCONER BRYAN & ASSOCIATES, NICOLE DENTON, SENIOR MARINE OR BUREAU VERITAS, SALVAGE ASSOCIATION FOR ANY OTHER UNDERWRITERS APPROVED SURVEYORS AND ALL OF THEM SHOULD BE COMPLIED WITH PRIOR, DURING AND AFTER THE VOYAGE AT ALL PORTS OF CALL.
- WARRANTED SURVEYOR TO ADVISE ANY PRE-VOYAGE PORT RISKS PRIOR TO ATTACHMENT.
- WARRANTED UNDERWRITERS TO BE NOTIFIED OF WARRANTY SURVEYOR UPON ATTACHMENT.
- WARRANTED NO CARGO SINCE AND BUT IT IS AGREED THAT THE TUGS FUEL ON BOARD CANNOT BE EXCLUDED WILL NOT PRECLUDE THIS INSURANCE SUBJECT TO SURVEYOR DETERMINING THE ALLOWED QUANTITY AND THE LOCATION ON BOARD (EXCEPT AS TO 25).
- WARRANTED WEATHER RECORDS TO BE OBTAINED CONTINUOUSLY, AT LEAST AS FOLLOWS PRIOR TO SALVAGE.
- WARRANTED TUGS TO BE CRUISED AND CLASSED MANAGED DURING THE WHOLE PERIOD OF COVER.
- WARRANTED TUGS TO BE BROKE ON STATION DURING DELIVERY TO BREAKERS (NEW BURGERS).
- UNDERWRITERS SHALL BE RELEASED FROM ALL LIABILITY FROM THE DATE OF ANY BREACH OF WARRANTY.
- WARRANTED EXPERIENCED CREW ON BOARD THE TUGS.

THE ABOVE WARRANTIES ARE ADDITIONAL TO ANY EXPLICIT OR IMPLIED WARRANTIES CONTAINED WITHIN THE CONVENTIONS ABOVE OR ANY CLAUSES REFERRED TO THEREIN, OR JOINTLY BY STATUTE.

**DEDUCTIBLE** : CL. 12 US\$ 150,000- ANY ONE INCIDENT OR OCCURRENCE.

**RATE/PREMIUM** : AS AGREED  
PREMIUM PAYABLE AS FOLLOWS:  
50% OF THE PREMIUM PAYABLE PRIOR TO ATTACHMENT - BALANCE OF 50% OF THE PREMIUM PAYABLE PRIOR TO SALVAGE OF THE CONVOY


**JURISDICTION** : THIS INSURANCE SHALL BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE ENGLISH COURTS, LONDON AND PRACTICE EXCEPT IN CASES PROVIDED HEREIN TO THE CONTRARY.





EXHIBIT 2



In the High Court of Justice Queen's Bench Division Commercial Court									
Claim No. <b>2008 Folio 6</b>	Date of filing <b>6th January 2008</b>								
<div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <p><b>Claimant</b></p> <p><b>SHIELS SHIPPING INC.</b>          3rd FLOOR STREET          MONROVIA          LIBERIA          BANK OF MONROVIA (EUROPE) LTD. UK          60-61 ALCO COURT          23 THOMAS MOKE STREET          LONDON E1W 1XX          (Defendant)</p> <p><b>CRAN INSURANCE COMPANY</b></p> </div> <div style="width: 35%; text-align: center;">  </div> </div>									
<p><b>Particulars of Claim</b></p> <p>The claim relates to a Charterparty of Insurance between the Claimant and the Defendant under which the Defendant insured the Claimant's cargo "CAVALIER CHALLENGER". Please refer to the attached Particulars of Claim for further detail.</p>									
<p><b>Value</b></p> <p>The cargo insured on the "CAVALIER CHALLENGER" was insured for US\$ 1 million. Please refer to the attached Particulars of Claim for further detail.</p>									
<p><b>Order for Judgment</b></p> <p>FOR THE CLAIMANT          [Signature]          [Name]</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Amount claimed</td> <td style="width: 50%;">To be assessed</td> </tr> <tr> <td>Costs</td> <td>\$1,000,000</td> </tr> <tr> <td>Settlement costs</td> <td>To be assessed</td> </tr> <tr> <td>Interest</td> <td>To be assessed</td> </tr> </table>	Amount claimed	To be assessed	Costs	\$1,000,000	Settlement costs	To be assessed	Interest	To be assessed
Amount claimed	To be assessed								
Costs	\$1,000,000								
Settlement costs	To be assessed								
Interest	To be assessed								

By order of the Court, the Claimant's application for summary judgment is granted. The Defendant is ordered to pay to the Claimant the sum of \$1,000,000 plus interest on that sum at the rate of 8% per annum from the date of the judgment until payment in full. The Claimant is ordered to pay the Defendant's costs of the application.



**Claim No.**

Date, month, year when this entry was made under Patent Rights Act 1987 ☐ Yes ☒ No

**Particulars of Claim (attach page after page)**

Please refer to the attached Particulars of Claim

**Statement of Truth**  
\*(I declare on oath or belief that the facts stated in these particulars of claim are true.)  
\* I understand what is required by the declaration and its consequences

Full name James Christopher Goeling

Name of claimant's solicitor's firm Herbert Smith & Wilson

Signed J.C. Goeling position or office held Partner  
(if signing as agent, state name of claimant's solicitor) (if signing on behalf of firm or company)

Witness as appropriate

Hobbes Frederick Wilson  
Master of Court  
Deputy Master  
London  
ECBN 041

Reference ADBL67400



IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
COMMERCIAL COURT

2008 FOLIO 6

BETWEEN:

(1) JAMIE SHIPPING INC.  
(2) BANK MANDIRI (EUROPE) LTD. UK

Claimants

-and-

OMAN INSURANCE COMPANY

Defendants

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REPLY<sup>1</sup>  
(INCORPORATING PARTICULARS OF CLAIM<sup>2</sup>  
AND DEFENCE<sup>3</sup>)

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D1. Unless otherwise stated:

- (1) Paragraphs in bold single spaced type are paragraphs from the Particulars of Claim.
- (2) References to paragraph numbers are to the paragraphs of the Particulars of Claim;
- (3) The terminology used in the Particulars of Claim is adopted.

R1. Save insofar as the same consists of admission of the matters stated in the Particulars of Claim, and save insofar as appears from the matters stated below, the Claimants join issue with the Defendants on their Defence.

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<sup>1</sup> Designated by "R" followed by the relevant paragraph number to which the Reply is addressed.

<sup>2</sup> Designated by "P" followed by the relevant paragraph number.

<sup>3</sup> Designated by "D" followed by the relevant paragraph number of the Defence.



21. By a Marine Hull Policy of insurance no. DVCSTP260660(2022) contained in and/or evidenced by an indented policy and attached schedule ("the Policy"), the Defendants agreed (subject to the terms of the Policy) to make good to the "Insured" and/or to indemnify the "Insured" against all such loss, damage or liability relating *inter alia* to the vessel "CANADIAN CHALLENGER" ("the Vessel") as therein referred to.

D2. Paragraph 1 is admitted.

D3. The Policy was a contract of marine insurance to which the Marine Insurance Act 1906 applied.

R3. Paragraph D3 above is admitted.

F2. The Claimants were at all material times identified in the Policy as, and were, an "Insured" hereunder.

D4. Paragraph 2 is admitted. Pursuant to Endorsement 1 dated 24<sup>th</sup> March 2006 it was agreed that the following amendment was incorporated into the Policy with effect from 16<sup>th</sup> March 2006:

"The name of the insured is changed to M/S Lenta Shipping Inc (as owners) and/or Bank Leumi (Europe) Limited, UK (as mortgagees) for their respective rights and interests ICR vessel CANADIAN CHALLENGER.  
Pasha Marine Investments SA (as Owners) and/or Bank Leumi (Europe) Limited, UK (as mortgagees) for their respective rights and interests IRO vessel ACATE ISMADE (sic)

SUBJECT OTHERWISE TO THE SAME TERMS, CONDITIONS AND LIMITATIONS OF THE SAID POLICY"

R4. Paragraph D4 above is admitted.

F3. The First Claimants (as the owners of the Vessel) and/or the Second Claimants (as the mortgagees of the Vessel) were at all material times fully interested in the Policy and will refer to the same as may be necessary for its full terms and effect. Further, by an assignment made after accrual of the First Claimants' interests under the Policy, the First Claimants assigned to the Second Claimants those interests.



D5. Paragraph 3 is admitted.

(1) On or about 21<sup>st</sup> March 2006 the First Claimant assigned to the Second Claimant "these insurances and all benefits thereof including all claims of whatever nature (including return of premiums) hereunder".

(2) The assignment further provided that all claims arising under the Policy, whether in respect of no actual constructive, average or compromised total loss or otherwise howsoever, would be paid to the Second Claimant, or as the Second Claimant may direct.

D5. Paragraph D5 above is admitted.

D6. The Policy by its express terms provided *inter alia* that:

- (1) The insurance was to cover a voyage from Cuba until safe arrival at Alang, India under double tow WEF from 16<sup>th</sup> March 2006 ("the Voyage").
- (2) The Vessels covered by the Policy (and named in the schedule thereto) were "CANADIAN CHALLENGER" and "AGATE ISLANDS".
- (3) The interest insured under the Policy was "Hull, materials, machinery etc and everything connected therewith nothing excluded".
- (4) The Vessel "CANADIAN CHALLENGER" was insured for the sum of US\$1,500,000.
- (5) The Institute Voyage Clauses - Hells (1/1/99) (amended in order to delete Clause 3) were to apply to the Policy.

D6. As to paragraph 5



(1) Sub-paragraph (1) is admitted. The Policy further provided *(inter alia)* that the voyage would in no event exceed 150 days. The following endorsements to the Policy extended the maximum period of the Policy as follows:

(a) Endorsement 2 dated 14<sup>th</sup> August 2006 extended the Policy for a period of 2 months with effect from 12<sup>th</sup> August 2006; and

(b) Endorsement 3 dated 17<sup>th</sup> August 2006 extended the Policy for period of 1 month with effect from 11<sup>th</sup> October 2006;

(2) Sub-paragraphs (2) to (3) are admitted.

86. Paragraph D6(1) (including sub-paragraphs (a) and (b)) is admitted.

87. The Defendant will refer to the Policy for its full terms and effect. The Policy further provided *(inter alia)*:

"EXPRESS WARRANTIES: Warranted that: tonnage and weather rating to be approved by staff surveyor of either ... Salvage Association ... and all of their recommendations complied with prior, during and after the voyage at assured's expense.

(Underwriters shall be discharged from all liability from the date of any breach of warranty.

The above warranties are additional to any explicit or implied warranties contained within the conditions above or any clauses referred to therein, or those imposed by Statute.

DEDUCTIBLE: CL 12 US\$ 150,000 - any one accident or occurrence.

87. As to paragraph 87 above:

(1) As to exemption granted (see the Defendant's paragraph 6(2) above), the Institute Voyage Clause - Hulls CL 285 (1/1/95) applied to the Policy.

(2) The reference to "CL 12" is the term "DEDUCTIBLE: CL 12 US\$ 150,000 - any one accident or occurrence" makes no sense unless it is understood to be a reference to the provision of the Institute Voyage Clause - Hulls CL 285 (1/1/95).



regarding deductibles (i.e. Clause 10 thereof); there is no "CL 12" to which the term can otherwise refer; meanwhile the only reference to deductibles is that in Clause 10 of the Institute Voyage Clauses - Rules CL 285 (1/1/95).

- (3) Accordingly, insofar as the Policy document includes the term "~~DEDUCTIBLE~~ CL 12 US\$ 150,000 -- any one accident or occurrence", it does not accurately reflect the agreement or intention of the parties. It therefore stands to be rectified in order to read "~~DEDUCTIBLE~~ CL 10 US\$ 150,000 -- any one accident or occurrence" (emphasis supplied).
- (4) Clause 10(1) of the Institute Voyage Clauses - Rules CL 285 (1/1/95) provides expressly that the deductible for which a policy provides "*shall not apply to a claim for total or constructive loss of the vessel*".
- (5) In the premises, the Policy ( duly rectified and upon its true and proper construction) provides that no deductible shall apply to a claim in respect of total or constructive total loss.
- (6) Save as aforesaid, paragraph D7 is admitted.

D8. On or about 25<sup>th</sup> May 2006, in accordance with the express warranties, a surveyor from The Salvage Association provided an Insurance Survey Certificate for the double tow of the vessels by the tug "RIG DELIVERER". The certificate provided that The Salvage Association had concluded that the tow presented no circumstances beyond those which might normally be accepted by underwriters, subject to compliance with the attached recommendations.

R8. As to paragraph D8 above:

- (1) The said Insurance Survey Certificate was preceded by a towage approval inspection conducted by The Salvage Association upon "RIG DELIVERER" and the Vessel on 21st, 22nd and 23rd March 2006.



(2) That salvage approval inspection revealed *inter alia* that on the Vessel, vent pipes were "heavily corroded through", that the main deck and cross decks were "corroded through/holed in various cargo holds", that sea valves were corroded, that the Vessel had a list to starboard, that various engine room standing pipes had no closing mechanism, that various tanks in the engine room had had manhole covers removed, that there were crepe-holed areas on the main deck, that there was a window/port hole opening in the accommodation block which required docking off, that there was a hole in external bulkhead, that various vents were not watertight, and that the main deck masthouses were corroded/holed.

(3) In light of this inspection, The Salvage Association made a number of recommendations with regard to closing, sealing or rendering watertight these various openings, by the use (variously) of welding, cement boxes and other means.

(4) These recommendations were duly effected.

(5) It was against that background that the said Insurance Survey Certificate was issued.

(6) Save as aforesaid, paragraph D8 is admitted.

D9. The Salvage Association's recommendations provided (*inter alia*):

1. The assistance to be provided at various intermediate bunkering ports as necessary and at arrival destination.

2. The to proceed on agreed routing south to Trincomalee or close port for fuel bunkers and inspection, (Type Tanker for bunkers and inspection, Drafton for inspection to Along WC India).

3. Vessel routing to include bunkering stations and that 11006 quantity of fuel oil necessary to arrive destination be on board prior to departure.

4. Toward vessels to be berthed at regular intervals including bunker station stops during voyage and any deficiencies noted to be rectified. Inspections to be entered in log book.



9. Try to maintain daily contact with Genoa, and report position, speed, date and time, fuel consumption, fuel remaining on board and distance to and from destination, and including condition of air on a weekly basis to Salvage Association. any serious problems with air to be immediately reported to Salvage Association [maritime@salvage.org](mailto:maritime@salvage.org), Fax 1-314-318-6666.

29. Excepting typographical errors, paragraph D9 above is admitted.

D10. Pursuant to the terms of the Policy set out at paragraph 7 of the Defence above and s. 32(3) of the Marine Insurance Act 1906:

- (1) The Claimant warranted that it would comply with all 9 of The Salvage Association's recommendations prior, during and after the voyage; and
- (2) the Defendant would be discharged from all liability from the date of any breach of warranties, including breach by failure to comply with The Salvage Association's recommendations prior, during or after the voyage.

R12. As in paragraph D10, and without prejudice to the matters stated below:

- (1) The Policy was, upon its true and proper construction, a single, indivisible policy covering the Claimant's interest in the vessels "AGATE ISLANDS" and "CANADIAN CHALLENGER".
- (2) Thus, a breach of any of the warranties to which the Defendants refer had the effect that the Defendants were entitled either to be discharged from all liability under the Policy from the date of breach or (pursuant to section 34(3) of the 1906 Act) to waive any such breach and to affirm the Policy.
- (3) In the event that the Defendants elected to waive any such breach and affirm the Policy, the Policy remained in effect (and the Claimants remained entitled to full relief thereunder) for all purposes and in respect of all interests thereunder.



(4) Save as aforesaid, paragraph D10 is admitted.

P5. The Institute Voyage Clauses - Hulls CL 285 (1/1/195) provided *inter alia* as follows:

"4. PERILS

4.1 This insurance covers loss of or damage to the subject matter insured caused by

4.1.1 perils of the sea...

4.2 This insurance covers loss of or damage to the subject matter insured caused by

...

4.2.1 negligence of Master Officers Crew or Pilots..."

D11. Paragraph 5 is admitted.

P6. The planned routing for the Voyage was from Newnes to Port of Spain, Trinidad and onwards to Cape Town, Durban and Alang. The tow was also permitted to proceed via intermediate bunkering stations.

D12. As to paragraph 6:

(1) It is admitted that the planned routing for the Voyage was from Newnes to Port of Spain, Trinidad or close port and onwards to Cape Town, Durban and Alang.

(2) It is admitted that the Vessel was permitted to proceed to those intermediate bunkering stations as specifically set out in Recommendation 4 of The Salvage Association's Recommendations.

(3) It is denied that, on the true and proper construction of The Salvage Association's Recommendations 3 & 4 the Vessel was permitted to proceed via other unnamed intermediate bunkering stations. Recommendations 3 and 4 of The Salvage Association's Recommendations provide as follows:



"3. The assistance to be provided on arrival at intermediate bunkering ports as necessary and on arrival destination."

"4. The vessel to proceed on agreed routing south to Trinidad or close port for fuel bunkers and inspection, Cape Town for bunkers and inspection, Durban for inspection to Along WC."

(4) In the premises the Vessel was only permitted to proceed via intermediate bunkering stations at Trinidad or close port and Capetown.

R32. As to paragraph B12, and without prejudice to the other matters stated hereto:

(1) The purpose of the Salvage Association's Recommendation 4 was simply to:

- (a) Identify the agreed principle routing for the convey from connection to Along WC.
- (b) Identify those principle ports at which the convey was to be inspected (and, as appropriate, also to bunker).

(2) That recommendation did not expressly (or, upon its true and proper construction, or impliedly) provide intermediate bunkering.

(3) Indeed, for practical purposes, it was probable that (even with the assurance of 110% of calculated bunker requirements on board) a convey of tug and two substantial tows, heading into strong currents and strong prevailing winds, with the potential for heavy seas and poor weather conditions, might need to bunker on at least one occasion between Trinidad and Cape Town. Against this background, it can not have been the intention of the parties that the convey should (under the terms of the Policy) be prohibited from calling at intermediate bunkering ports where such calls were necessary for the safety of the convey.

(4) Further, the Salvage Association's Recommendation 3 referred expressly to "intermediate bunkering ports". Such a reference would be redundant if the



intention of the parties was to restrict bunkering only to those ports to which Recommendation 4 referred; in such circumstances, there would be no "intermediate bunkering ports". Accordingly, Recommendation 3, upon its true and proper construction, contemplated the need for the convoy to call at bunkering ports other than those to which Recommendation 4 referred.

- (3) In the premises, the Recommendations, upon their true and proper construction (alternatively, pursuant to a *turn* to be implied therein in order to express the obvious intention of the parties), permitted the convoy to call at bunkering stations en route other than those to which Recommendation 4 referred.

P7. On 22<sup>nd</sup> May 2006, the tug "RIG DELIVERER" departed from Guaymas with "CANADIAN CHALLENGER" in tow.

D13. Paragraph 7 is admitted.

P8. On 23<sup>rd</sup> May 2006, "RIG DELIVERER" and "CANADIAN CHALLENGER" the vessel "AGATE ISLANDS" (which was anchored about 35 miles offshore (Guaymas) was included in the convoy. On 23<sup>rd</sup> to 24<sup>th</sup> May 2006, the tug made connection with "AGATE ISLANDS" and the convoy proceeded toward the next bunkering port, Port of Spain, Trinidad. The order in which the convoy proceeded was such that "AGATE ISLANDS" was towed ahead of "CANADIAN CHALLENGER".

D14. Save that it is admitted that

- (1) The "AGATE ISLAND" was connected up to the convoy on or about 25<sup>th</sup> May 2006;
- (2) The "AGATE ISLANDS" was towed ahead of "CANADIAN CHALLENGER";
- (3) The convoy departed on or about 23<sup>rd</sup> May 2006 for the Port of Spain, Trinidad where the "RIG DELIVERER" was to take on bunkers.



paragraph 8 is not admitted. The Defendant does not have primary knowledge of the remainder of the facts set out therein and the Claimant is put to strict proof of the other facts and matters set out therein.

P2. The tow proceeded to Trinidad where bunkers were stationed between 13<sup>th</sup> and 19<sup>th</sup> June 2006. On 20<sup>th</sup> June 2006 the convoy sailed from Trinidad for Recife, Brazil for the next bunkering station.

D15. Save that it is admitted that

- (1) On or about 12<sup>th</sup> June 2006 the convoy arrived off the Port of Spain, Trinidad;
- (2) Bunkers were supplied to the "RIG DELIVERER" in a position approximately 15 miles North of the channel entrance by a harbour tug; and
- (3) On or about 20<sup>th</sup> June 2006 the convoy sailed for Recife, Brazil.

paragraph 9 is not admitted. The Defendant does not have primary knowledge of the remainder of the facts set out therein and the Claimant is put to strict proof of the other facts and matters set out therein.

P10. En route from Trinidad to Recife the convoy encountered stronger current than expected and, in light of these conditions, "RIG DELIVERER" was instructed to call at an intermediate bunker station, Sao Luis.

D16. Save that it is not admitted that:

- (1) the current experienced was stronger than expected; and
- (2) no admissions are made as to the alleged instructions received by the "RIG DELIVERER".

paragraph 10 is admitted. The convoy encountered the adverse expected current running at a rate of about 4 knots which slowed the progress of the convoy.



R16. The final sentence of paragraph D16 is admitted.

D11. On 1<sup>st</sup> July 2006, the starboard main engine of "RIG DELIVERER" was shut down in order to conserve fuel, and on 18<sup>th</sup> July 2006 the port main engine was shut down in order to conserve the remaining bunkers on board. Arrangements were made for "RIG DELIVERER" to proceed into Sao Luis with tug assistance.

D17. Save that no admissions are made as to the arrangements made for the "RIG DEVELOPER" to proceed into Sao Luis with tug assistance, paragraph 11 is admitted.

R17. For the avoidance of doubt, paragraph D17 contains a typographical error: the tug was the "RIG DELIVERER" (emphasis supplied).

D12. Between 18<sup>th</sup> and 21<sup>st</sup> July 2006, while awaiting tug assistance, the convey drifted off the coast of Brazil, in the vicinity of Sao Luis. During this period, the weather deteriorated. The convey encountered force 7 to 8 east to south easterly winds and the sea state increased to 5 to 6. As a result "AGATE ISLANDS" drifted onto and lay alongside "CANADIAN CHALLENGER", causing some snagging damage on both sides.

D13. As to paragraph 12 it is admitted that the deck log of the "RIG DELIVERER" for the period 18<sup>th</sup> to 21<sup>st</sup> July 2006 show the weather and sea state conditions set out in paragraph 12. Save as aforesaid paragraph 12 is not admitted.

R13. On 21<sup>st</sup> July 2006, two harbor tugs from the port of Sao Luis arrived at the convey. The tug "REBRAS JURUPATIBA" took over the tow, while "RIG DELIVERER" was assisted by the tug "INTER II" to proceed into Sao Luis in order to take on board bunkers and provisions.

D19. Paragraph 23 is admitted.

R14. On 29<sup>th</sup> July 2006, the towage connection with "RIG DELIVERER" was re-established, and the towing voyage continued towards Recife, the next bunkering



situation. However, for the remainder of this leg of the voyage, the wind and weather conditions previously described were such as to reduce the speed of the convoy considerably.

D20. As to paragraph 14 it is admitted that:

(1) on or about 29<sup>th</sup> July 2006 the towage connection with the "RIG DELIVERER" was re-established;

(2) the convoy proceeded towards Recife, Brazil and

(3) the weather conditions are recorded in the deck log of the "RIG DELIVERER" as being Easterly to South Easterly force 5-10 with heavy seas and an ebb current.

Save as aforesaid, paragraph 14 is not admitted.

P15. On about 25<sup>th</sup> August 2006, the convoy arrived off the coast of Recife, Brazil, where arrangements were made for bunkering "RIG DELIVERER" in preparation for the next leg of the towing voyage, to Cape Town.

D21. Paragraph 15 is admitted.

P16. From 26<sup>th</sup> August 2006 to 12<sup>th</sup> September 2006, the convoy steamed slowly off the coast awaiting further instructions, while arrangements were made for the bunkering and re-provisioning of "RIG DELIVERER". Both towed vessels were in a stable condition and the weather conditions comprised mainly of south-easterly force 5 to 6 winds and a sea state of 3 to 5.

D22. The first sentence of paragraph 16 is admitted. It is further admitted that the weather during this period was logged as comprising mainly of south easterly force 5 to 6 winds and a sea state of 3 to 5 (although at the beginning of this period the sea state logged includes a sea state of 2).



D22. The final sentence of paragraph D22 is admitted. The Claimants will refer to the log as may be necessary for its precise contents and effect.

D23. Save as aforesaid paragraph 16 is not admitted. In particular no admission is made as to the condition of the towed vessels "CANADIAN CHALLENGER" and "AGATE ISLAND".

D17. At about 0540 hours on 12<sup>th</sup> September 2006, the crew of "RIG DELIVERER" observed that "CANADIAN CHALLENGER" had developed a list of about 5° to starboard. By the evening of 13<sup>th</sup> September 2006, the list had increased to 25° to starboard.

D24. Paragraph 17 is not admitted. To the best of the Defendant's knowledge and belief

(1) The deck log of the "RIG DELIVERER" first notes that the "CANADIAN CHALLENGER" had developed a list of approximately 5° to starboard on 14<sup>th</sup> September 2006:

(2) The deck log further notes that at 09:00 hrs on 14<sup>th</sup> September 2006 the list had increased to 15° starboard.

(3) The deck log further notes that at 17:00 hrs on 14<sup>th</sup> September 2006 the list had increased to 20° (or 25° (the log entry is not clear)) to starboard.

The Claimant is put to strict proof of the facts and matters set out in paragraph 17.

D24. Paragraph D24 is noted and the contents of the log as stated are admitted. Based on a report (the "Time Sheet") made by the Master of "RIG DELIVERER" to the Owners/Managers on 15<sup>th</sup> September 2006, and subsequently disclosed to the Defendants' surveyors, Noble Denton, on 29<sup>th</sup> September 2006, the Claimants will contend that:

(1) At about 0545 hours on 12<sup>th</sup> September 2006 the Vessel was observed to have a starboard list of about 5° to 8°.



(2) By the morning of 13th September 2006, the list had increased to about 12° to 15°.

(3) By the evening of 13th September 2006, the list had increased to about 20°.

(4) By the afternoon of 13th September 2006, the list had increased to about 25°.

(5) The Vessel capsize to starboard at about 0250 hours on 15th September 2006.

(6) The Vessel sank at about 0352 hours on 15th September 2006.

P18. By the evening of 14th September 2006, the list had increased to about 25° to starboard and "CANADIAN CHALLENGER" had also begun to trim by the stern. As a precaution, the Master shortened the length of the tow line to about 300 metres so as to be in a position to observe "CANADIAN CHALLENGER" during the night.

D25 As to paragraph 18 it is admitted that:

(1) the deck log of the "RIG DELIVERER" records at 00:00 hrs on 12th September 2006 that the list of the "CANADIAN CHALLENGER" had increased to more than 25°.

(2) the deck log of the "RIG DELIVERER" records that the tow line to the "CANADIAN CHALLENGER" was shortened to approximately 100 metres during the evening of 14th September 2006.

Save as set out above paragraph 18 is not admitted and the Claimant is required to prove the facts and matters set out therein.

R25 Paragraph D25 is noted. The Claimants refer to paragraph R24.

P19. At about 0250 hours on the morning of 15th September 2006, "CANADIAN CHALLENGER" lost stability and capsize to starboard. The Master then reduced the length of the towing line so as to bring "CANADIAN CHALLENGER" close under the stern of "RIG DELIVERER".



D25 Paragraph 19 is admitted. The deck log of the "RIG DELIVERER" recorded that at 0220 hrs the length of the towing line was reduced so that the "CANADIAN CHALLENGER" was 20 to 25 m from the stern of the "RIG DELIVERER".

D26 The final sentence of paragraph 19 is admitted.

P20 At 0325 hours on the same day, the Master of "RIG DELIVERER" ordered that the towing wire should be cut. "RIG DELIVERER" then remained in the vicinity of "CANADIAN CHALLENGER", which remained capsized but afloat.

D27 Paragraph 20 is admitted.

P21 At about 0352 hours on 15<sup>th</sup> September 2006, "CANADIAN CHALLENGER" sank in approximate position 08°00'25S, 035°55'25W.

D28 Paragraph 21 is admitted.

P22 In the premises, the Vessel became a total loss by perils of the seas during the currency of the Policy. In this regard, and to the extent that it is necessary, the Claimants will contend that the Vessel was lost as a result of the racking damage referred to in paragraph 12 above.

D29 Since that it is admitted that the Vessel became a total loss in that she sank on 15<sup>th</sup> September 2006, paragraph 22 is denied. It is denied that the Vessel became a total loss by perils of the seas during the currency of the Policy. In particular it is denied that the Vessel was lost on or about 15<sup>th</sup> September 2006 as a result of racking damage which occurred on or about 21<sup>st</sup> July 2006.

D30 The Defendant reserves the right to plead further following the provision of disclosure and/or expert evidence. Without prejudice to the foregoing and the burden of proof (which rests on the Claimant) the Defendant states as follows:

(i) There was a period of two months between the alleged racking damage and the Vessel sinking.



(2) The weather conditions (including sea state) improved during this period.

(3) The deck log of the "RIG DELIVERER" records that the crew went onboard the "CANADIAN CHALLENGER" on 31<sup>st</sup> August 2006 and stated that her condition was "satisfactory".

(4) In the premises it is unlikely that the Vessel sank due to the missing damage which occurred on or about 21<sup>st</sup> July 2006.

R30. As to paragraph R30:

(1) While "CANADIAN CHALLENGER" was approved by The Salvage Association (on the Defendants' behalf) for towage, she was (as the Defendants well know) intended for scrapping, on a scrapping voyage, and, accordingly, in scrap condition. In this regard, the Claimants refer to paragraph R8 above.

(2) At about 1800 hours on 18th July 2006 "AGATE ISLANDS" and "CANADIAN CHALLENGER" drifted together and collided.

(3) Initially, "AGATE ISLANDS" drifted down wind to lie alongside the port side of "CANADIAN CHALLENGER".

(4) In the south-easterly Force 6 winds and heavy swell the two vessels ranged alongside each other for about 10 hours.

(5) Subsequently, "AGATE ISLANDS" began to drift astern, with the result that her starboard bow was resting on the port quarter of "CANADIAN CHALLENGER".

(6) Thereafter, the two vessels ranged against each other with the result that considerable damage was caused to the port quarter of "CANADIAN CHALLENGER" and visible holes were created in the stem of "AGATE ISLANDS".



- (7) From 18th to 19th July 2006 "AGATE ISLANDS" lay astern of "CANADIAN CHALLENGER" and then shifted position with the result that she lay alongside the starboard side of "CANADIAN CHALLENGER".
- (8) The two vessels continued to range against each other until 20th July 2006.
- (9) Meanwhile, weather conditions deteriorated, with the convoy experiencing south-easterly winds of Force 8 to 9 and heavy swell from 18th to 19th July 2006 and continued poor conditions until 21st July 2006.
- (10) By 21st July 2006, "AGATE ISLANDS" was about 50 metres off the starboard side of "CANADIAN CHALLENGER".
- (11) As a result of the earlier contact between the two vessels from 18th to 20th July 2006, damage to the stern of "CANADIAN CHALLENGER" was considerable, and included cracks in the vicinity of the waterline on the stern.
- (12) Despite the visible damage to "CANADIAN CHALLENGER", any inspection of the Vessel effected by the crew of "TIC DELIVERER" by means of boarding the Vessel would (given the condition of the Vessel see paragraph R8 above) necessarily have been of limited scope. While damage was visible externally at the stern of "CANADIAN CHALLENGER", an internal inspection would have been unlikely to reveal the existence of any breach of the hull below the waterline and/or any damage to and/or failure of the cement bones and/or other repairs/closures or openings referred to in paragraph R8 above. Accordingly, any ingress of water into the hull of "CANADIAN CHALLENGER" which was not immediately visible upon inspection would probably have gone unnoticed despite the exercise of reasonable measures by way of inspection.
- (13) Given the extent of the externally visible damage to "CANADIAN CHALLENGER", it is likely that other damage consequent upon the contact between the two vessels (which may have included damage to and/or the failure



of the cement boxes and/or other repairs/closures to openings referred to in paragraph R8 above) resulted.

(14) Against this background, and given that weather conditions began to improve from about 21st July 2006, it is likely that the contact between the two vessels resulted in a slow ingress of water into the hull of "CANADIAN CHALLENGER" (either from a breach of the hull resulting directly from the contact between the vessels, or from damage to and/or the failure of the cement boxes and/or other repairs/closures to openings referred to in paragraph R8 above as a result of such contact). Such ingress would, in the presence of more benign weather and sea conditions, not have affected the stability of the Vessel until the free surface effect of the water which had entered the hull was sufficient to cause the list which was first observed on 12th September 2006. Once the stability of the Vessel was thus affected, however, further ingress, listing and the eventual capsizing and sinking of the Vessel was rapid.

(15) Thus, in the absence of any alternative explanation for the loss of the Vessel, it is probable that the damage resulting from the contact between the vessels was the cause of the loss.

(16) Without prejudice in the foregoing, the Claimants will in any event rely upon the fact of the sinking of the Vessel while under tow and in open sea, coupled with the condition of the Vessel (as referred to in paragraph R8 above, and of which the Defendants were at all material times aware) and the weather conditions during the course of the voyage prior to the loss, as evidence sufficient to give rise to an obvious inference to the effect that the Vessel was lost by reason of a peril of the sea.

P23. As a result of the matters set out above, the Defendants became liable under the Policy to pay to the Claimants the sum of US\$1,000,000 as provided for in the Policy (being the agreed value of the Vessel thereunder).

D31. Paragraph 35 is denied. It is denied that the Defendants became liable under the Policy to pay the Claimants the sum of US\$1,000,000 for the following reasons:



(1) The Claimant was in breach of recommendations 4, 5, 6 and 9 of The Salvage Association's recommendations. In the premises the Defendant was discharged from all liability from the date of the breach of the express warranties (as further particularised at paragraphs 32 to 37 of the Defence below).

(2) Further and/or alternatively (if loss was not caused by an insured peril. Paragraphs 29 & 30 of the Defence above are repeated).

(3) Further and in any event the Policy contained a US\$150,000 deductible any one accident or occurrence. In the premises if which is denied, the Defendant is liable to the Claimant under the Policy the Claimant is only entitled to recover the insured value minus the deductible namely US\$850,000.

D32. The Claimant was in breach of recommendation 4 of The Salvage Association's recommendations in that the Vessel proceeded via a bunkering port, namely Recife, Brazil, which was not permitted under recommendations 3 & 4 of The Salvage Association's recommendations. In the premises the Defendant was discharged from all liability from the date of the breach of recommendation 4.

R32. Paragraph D32 is denied. The Claimants refer to paragraph R12 above.

D33. The Claimant was in breach of recommendation 5 of The Salvage Association's recommendations in that the Vessel did not have 110% of the quantity of fuel onboard for the passage from Trinidad to Recife, Brazil (a port not permitted under The Salvage Association's recommendations); and/or from Trinidad to Cape Town. In the premises the Defendant was discharged from all liability from the date of the breach of recommendation 5.

R33. Paragraph D33 is denied. Upon departure from Trinidad, "RIG DELIVERER" had on board no less than 110% of the quantity of bunkers required in order to complete a voyage to one of a number of possible intermediate bunker ports permitted under The Salvage Association's Recommendation 3 (including, but not limited to, for example, Georgetown, Paramaribo, Belm and Sao Luis). As it was, bunkering took place at



Maqui (which was considerably further from Trinidad than any of the four ports mentioned above).

D34. The Claimant was in breach of recommendation 6 of The Salvage Association's recommendations in that the Vessel was not boarded and/or inspected at regular intervals and/or such inspections were not entered in the log book. The deck log of the "RIG DELIVERER" records that the Vessel was only boarded and inspected on 31<sup>st</sup> August 2006. In the premises the Claimant is in breach of recommendation 6 of The Salvage Association's recommendations. In the premises the Defendant was discharged from all liability from the date of the breach of recommendation 6.

R34. As to paragraph D34:

- (1) It is admitted that the log contains only the one record of the boarding and inspection of the Vessel (on 31<sup>st</sup> August 2006).
- (2) However, upon the true and proper construction thereof, Recommendation 6 took effect only as a warranty to the effect that the Vessel would be "*boarded at regular intervals including bunker station stops during voyage*" and to the effect that deficiencies noted would be rectified. The requirement to the effect that inspections were to be recorded in the log book (which requirement was not subject to any stipulation as to a time limit for compliance) was merely ancillary, and a failure to comply with that requirement did not amount to a breach of warranty.
- (3) The Claimant will as necessary rely upon the fact (recorded in a report by Master Noble Denton dated 30<sup>th</sup> November 2006) that the Master of "RIG DELIVERER" informed Master Noble Denton (acting on behalf of the Defendants) that "*the ship was boarded every ten days*".
- (4) The Claimant will also rely as necessary upon the facts that:
  - (a) The need to comply with The Salvage Association's recommendations had been impressed upon the crew of "RIG DELIVERER".



(b) Copies of the recommendations were placed on board "RIG DELIVERER".

(c) The crew of "RIG DELIVERER" complied with all other recommendations.

(5) In the premises, and save as aforesaid, paragraph D34 is denied.

(5) Without prejudice to the foregoing:

(a) The Claimants refer to paragraph R36 (11) and (12) above.

(b) In the premises, any inspection of the Vessel was futile and without practical benefit to either party.

(c) Accordingly, and as a matter of law, strict compliance with Recommendation 6 was excused and/or any failure to comply with the said recommendation was excusable and of no effect.

D35 Furthermore, the Defendant notes that the photos taken by the Master of the "RIG DELIVERER" show that there was no boarding ladder rigged on the starboard side of the Vessel. Given that the photographs of the "AGATE ISLAND" show that there was contact on both port and starboard sides of the Vessel the Claimant is put to strict proof that there was a boarding ladder on the port side of the Vessel at all material times so that boarding and inspection of both the Vessel and the "AGATE ISLAND" could be carried out.

R35. As to paragraph D35:

(1) It was possible to board the Vessel other than by use of a boarding ladder. For example, on 15th May 2006 "AGATE ISLAND" was boarded directly from "RIG DELIVERER" by means of mooring the latter vessel alongside the former.



- (2) Accordingly, whether or not a hoisting ladder was available on the port side of the Vessel is irrelevant; boarding was nonetheless possible.

D16. The Claimant was in breach of recommendation F of The Salvage Association's recommendations that the Owners report weekly to The Salvage Association in that the Claimants did not report to The Salvage Association on a weekly basis. In the premises the Defendant was discharged from all liability from the date of the breach of recommendation 9

D26. As to paragraph D26:

- (1) At about 1200 hours local time each day, the Master of "REG DELIVERER" provided the owners/managers of the Vessel with information regarding the progress of the towage operation. This included details of the 1200 hours position, course, speed over the ground, average speed over the previous 24 hours, wind and weather conditions, the performance of the main engine, oil and fuel quantities remaining on board, consumption figures for bunkers and water, and details of any defects or deficiencies which might affect the voyage.
- (2) Owing to administrative error (the Master believed that the owners/managers would provide his reports to The Salvage Association, while owners/managers believed that the Master was himself providing them directly to The Salvage Association), these daily reports were not provided to The Salvage Association.
- (3) As it was, sight by The Salvage Association of the Master's reports would have been futile and without practical benefit to either party: it would have made no difference to the progress or conduct of the towage operation, and would not have avoided the loss of the Vessel. In this regard, the Claimants will rely as necessary upon the fact that The Salvage Association took no steps prior to the loss of the Vessel to seek or enquire as to any report from the Master.
- (4) Accordingly, and as a matter of law, strict compliance with Recommendation 9 was excused and/or any failure to comply with the said recommendation was excusable and of no effect.



D37. In the premises the Defendant was discharged from all liability under the Policy before the Vessel became a total loss or or about 15<sup>th</sup> September 2006.

R37. Against the background of the matters stated above, paragraph D37 is denied. Further and alternatively, and without prejudice to the matters stated above, the Defendants are in any event precluded from relying upon the alleged breaches of warranty (or any of them) as a defence to the Claimants' claim.

(1) By about 22nd September 2006, The Salvage Association and/or Messrs. Noble Denton had been instructed by the Defendants to investigate the circumstances surrounding the loss of the Vessel.

(2) From that date, The Salvage Association and/or Messrs. Noble Denton were provided by the owners/managers of the Vessel (and/or their legal representatives) with all assistance and information requested.

(3) On 28th September 2006 owners/managers and their legal representatives met with a representative of the Defendants, Mr. Khendaker, in order to discuss the circumstances of the loss of the Vessel. Prior to or at that meeting, the Defendants were provided (by means of a "without prejudice" communication) with a detailed account of the circumstances of the loss and were taken through the available evidence. At that meeting, Mr. Khendaker confirmed that Messrs. Noble Denton were instructed by the Defendants to investigate the loss of the Vessel.

(4) Further to that meeting, and later on the same date, owners/managers and their legal representatives met with a representative of Noble Denton, Captain Wells, and provided him with a detailed background to the loss of the Vessel, together with a copy of the "without prejudice" communication referred to above. At that meeting, Captain Wells identified a number of documents which he would wish to consider. Further, and in response to specific questions posed by Captain Wells regarding matters concerning compliance with The Salvage Association's recommendations (referred to above), Captain Wells was



informed of all matters relevant to the question of whether there had or had not been such compliance.

(5) Thereafter, owners/managers made every effort to ensure that any documents requested by Captain Wells were provided to Noble Denon.

(6) In the premises, by no later than 5th October 2006 the Defendants were sufficiently aware of all relevant facts and matters regarding the loss of the Vessel in order to determine whether there existed any right on their part (which right is denied) to be discharged from liability under the Policy by reason of the alleged or any breach(es) of warranty.

(7) By an email communication dated 5<sup>th</sup> October 2006 the Defendants informed the owners/managers of the Vessel (via their broker) that "Consequent to recent incident to Canadian Challenger we are pleased to confirm that insurance cover as per relevant policy will continue uninterrupted on Agate Island".

(8) In the premises, and in light of the matters stated in paragraph REX(1) above, the Defendants unequivocally affirmed the Policy and waived any alleged breach(es) of warranty on the part of the Claimants.

(9) In the premises, the Defendants waived any right (which is denied) to treat their liability under the Policy as discharged.

234. On or about 25<sup>th</sup> September 2006, and in accordance with the terms of the Policy, the Claimants notified the Defendants of the sinking of the Vessel and of the fact that she had become a total loss, and sought payment under the Policy.

235. It is admitted that on or about 16<sup>th</sup> September 2006 the Claimants notified the Defendants by e-mail that the Vessel had sunk about 50 miles off Raslic in deep water. Save as otherwise provided paragraph 38 is not admitted.



P25. Wrongfully and in breach of contract, the Defendants have failed and/or refused to pay the value under the Policy and/or US\$1,000,000 and/or any sum (whether by way of indemnity or otherwise) to the Claimants pursuant to the Policy or otherwise.

D39. Paragraph 25 is denied. It is denied that the Defendants wrongfully and/or in breach of contract failed and/or refused to pay the value under the Policy as alleged or at all. For the reasons set out above the Defendants are not, and at all material times were not, under a liability to pay under the Policy for the loss of the Vessel. The Defendant was discharged from all liability under the Policy before the Vessel became a total loss on or about 15<sup>th</sup> September 2006.

R39. For the reasons set out above, paragraph D39 is denied.

P26. In the premises, the Defendants are liable:

- (1) To pay to the Claimants the value under the Policy and/or US\$1,000,000.
- (2) Further and alternatively, in damages.
- (3) Further and alternatively, to indemnify the Claimants pursuant to the Policy.

D46. Paragraph 26 is denied. For the reasons set out above it is denied that the Claimant is entitled to the sums alleged, or any sums, under the Policy as alleged or at all.

R46. For the reasons set out above, the denial in paragraph D46 (and that in paragraph D44 below) is without foundation.

P27. Further the Claimants are entitled to add alpha interest (compounded at quarterly rates) at common law, alternatively, simple interest pursuant to section 35A of the Supreme Court Act 1981 and/or the inherent jurisdiction of the Court on any sums that may be found due to them, at such commercial rate and for such period as the Court considers just.



1341. Save that if, which is denied, the Defendants are liable to the Claimants it is admitted that the Claimant is entitled to interest pursuant to s. 35A of the Supreme Court Act 1981. Save as aforesaid paragraph 27 is denied.

AND THE CLAIMANTS CLAIM:

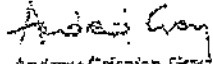
- (1) The agreed value under the Policy, alternatively US\$1,000,000.
- (2) Further and alternatively damages.
- (3) Further and alternatively, an indemnity pursuant to the Policy.
- (4) Interest pursuant to common law and/or pursuant to section 35A of the Supreme Court Act 1981 and/or the inherent jurisdiction of the Court.
- (5) Costs.
- (6) Such further or other relief as may be necessary or appropriate.

P: NEVIL PHILLIPS (counsel for the Claimants)

D: RUTH BOSKING (counsel for the Defendants)

R: NEVIL PHILLIPS (counsel for the Claimants)

The Claimants believe that the facts stated in this Reply are true. I am duly authorised by the Claimants to sign this statement.

Signed:   
Full Name: Andrew Crispian Gray  
Position: Solicitor employed by Halsall, Foxcroft & Wilson  
Dated: 5 March 2008

502575 21XOC



EXHIBIT 3



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES SHIPPING INC., PUFFIN MARINE  
INVESTMENTS SA and BANK MANDIRI  
(EUROPE) LTD. UK,

Plaintiffs,

- against -

OMAN INSURANCE CO.,

Defendant.

08 CV \_\_\_\_\_

AFFIDAVIT IN SUPPORT OF PRAYER FOR MARITIME ATTACHMENT

State of Connecticut )

ss: SOUTHPORT

County of Fairfield )

Anne C. LeVasseur, being duly sworn, deposes and says:

1. I am a member of the Bar of this Court and represent the Plaintiff herein. I am familiar with the facts of this case and make this Affidavit in support of Plaintiff's prayer for the issuance of a Writ of Maritime Attachment and Garnishment, pursuant to Rule B of the Supplemental Admiralty Rules of the Federal Rules of Civil Procedure.

DEFENDANT IS NOT PRESENT IN THE DISTRICT

2. I have attempted to locate the Defendant, OMAN INSURANCE CO. within this District. As part of my investigation to locate the Defendant within this District, I checked the telephone company information directory, as well as the white and yellow pages for New York listed on the Internet or World Wide Web, and did not find any listing for the Defendant. Finally, I checked the New York State Department of Corporations' online database which showed no listings or registration for the Defendant.



3. I submit based on the foregoing that the Defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims.

4. Upon information and belief, the Defendant has, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of or in the hands of garnishees within this District, which are believed to be due and owing to the Defendant.

5. This is Plaintiffs' first request for this relief made to any Court.

PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER

6. Plaintiffs seek an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Harry R. Peterson, Coleen A. McBry, Anne C. LeVasseur or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Codrum Process Servers, in addition to the United States Marshal, to serve the Ex Parte Order and Process of Maritime Attachment and Garnishment, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiffs may hold property of, for or on account of, the Defendant.

7. Plaintiffs seek to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiffs and entered against the Defendant.

8. To the extent that this application for an Order appointing a special process server



with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishees to be identified in the writ.

PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES

9. Plaintiff's also respectfully request that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendant, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS

10. Further, in order to avoid the need to physically serve the garnishees/banks daily and repetitively, Plaintiff's respectfully seek further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service throughout the remainder of the day upon which service is made commencing from the time of such service; and such service to be further deemed effective through the end of the next business day, provided that another service is made that day, and to authorize service of process via facsimile or e-mail following initial in person service.



PRAYER FOR RELIEF TO TEMPORARILY SEAL CASE

11. Upon information and belief, it is the practice of many law firms in the maritime bar to review the daily electronic docket sheet of the Southern District of New York for all maritime actions filed in the district and inform the defendant(s) named therein of any Ex Parte Orders of Attachment pending against them, thus defeating the purpose of the "Ex Parte" application.

12. Upon information and belief, it is the practice of certain publications, specifically Tradewinds, to publish the names of defendants named in Ex Parte Orders of Attachment, thus further defeating the purpose of the "Ex Parte" application.

13. Upon information and belief, Tradewinds has very recently publicized the names of parties in Rule B proceedings, the amount of the attachments, and other details of the actions, thereby further defeating the purpose of the "Ex Parte" application.

14. The Courts within the Southern District of New York have an interest in preserving the efficacy of the Ex Parte Orders issued therein.

15. The above interest supersedes the interest in maintaining a completely public docket, especially given that the public's access will only be limited temporarily until assets are attached and notice of attachment has been provided to the Defendant.

16. Indeed, the public's access to Ex Parte Orders of Maritime Attachment defeats their entire purpose, by depriving Plaintiffs of the element of surprise and potential allowing Defendant to re-route their funds to avoid the attachment, thus making the attachment remedy hollow.




17. For the foregoing reasons, Plaintiffs request that the Court issue an Order temporarily sealing the court file in this matter, including the Verified Complaint and all other pleadings and Orders filed and/or issued hereto until further notice of this Court or notification to the clerk that property has been attached.

18. This request is narrowly tailored to meet Plaintiffs' needs. Once property is attached, the case should be unsealed, as the interest underlying sealing the case will have been largely eliminated.

Dated: July 30, 2008  
Southport, CT

  
Anne C. LeVasseur

Sworn and subscribed to before me  
this 30<sup>th</sup> day of July, 2008

  
Notary Public



## **EXHIBIT B**



08 CV 6882

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORKJAMIE SHIPPING INC., PUFFIN MARINE  
INVESTMENTS SA and BANK MANDIRI  
(EUROPE) LTD. UK,

Plaintiffs,

- against -

OMAN INSURANCE CO.,

Defendant.

08 CV

EX PARTE ORDER  
FOR PROCESS OF  
MARITIME  
ATTACHMENT

WHEREAS, on July 30 2008, Plaintiff JAMIE SHIPPING INC., PUFFIN MARINE INVESTMENTS SA and BANK MANDIRI (EUROPE) LTD. UK filed a Verified Complaint, herein for damages amounting to \$ 3,558,732.50 inclusive of interest, costs and reasonable attorneys' fees, and praying for the issuance of Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Admiralty Rules for Certain Admiralty and Maritime Claims of the Federal Rules and Civil Procedure; and

WHEREAS, the Process of Maritime Attachment and Garnishment would command that the United States Marshal, or other designated process server, attach any and all of the Defendant's property within the District of this Court; and

WHEREAS, the Court has reviewed the Verified Complaint and the Supporting Affidavit, and the conditions of Supplemental Admiralty Rule B appearing to exist;

NOW, upon motion of the Plaintiff, it is hereby:

ORDERED, that pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, the Clerk of the Court shall issue Process of Maritime Attachment and Garnishment against all tangible or intangible property, credits, letters of credit, bills of lading, effects, debts and



monies, electronic funds transfers, freights, sub-freights, charter hire, sub-charter hire or any other funds or property up to the amount of \$ 3,438,738.50 belonging to, due or being transferred to, from or for the benefit of the Defendant, including but not limited to such property as may be held, received or transferred in Defendant's name(s) or as may be held, received or transferred for its benefit or, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be named on whom a copy of the Process of Maritime Attachment and Garnishment may be served; and it is further

ORDERED that supplemental process enforcing the Court's Order may be issued by the Clerk upon application without further Order of the Court; and it is further

ORDERED that following initial service by the U.S. Marshal, or other designated process server, upon each garnishee, that supplemental service of the Process of Maritime Attachment and Garnishment, as well as this Order, may be made by way of facsimile transmission or other verifiable electronic means, including e-mail, to each garnishee; and it is further

ORDERED that service on any garnishee as described above is deemed to be effective and continuous service throughout the remainder of the day upon which service is made commencing from the time of such service; and such service is further deemed to be effective through the end of the next business day, provided that another service is made that day; and it is further

ORDERED that pursuant to Federal Rule of Civil Procedure 3(b)(2)(D) each garnishee may consent, in writing, to accept service by any other means.

Dated: July 31, 2008

SO ORDERED:

*John F. Keenan*  
U. S. D. J.

CERTIFIED AS A TRUE COPY ON

THIS DATE 08.01.08

BY B. J. O'Connell

Clerk

Deputy



**JAMES KEENAN**

**08 CV 6882**

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Marshal of the Southern District of New York (or designated process server) - GREETINGS:

WHEREAS a Verified Complaint has been filed in the United States District Court for the Southern District of New York on the 30<sup>th</sup> day of July 2008 by

**JAMIE SHIPPING INC., PUFFIN MARINE INVESTMENTS SA and BANK  
MANDIRI (EUROPE) LTD. UK**  
Plaintiff,

against

**OMAN INSURANCE CO.**  
Defendant,

in a certain action for breach of maritime contract wherein it is alleged that there is due and owing from the Defendants to the said Plaintiff the amount of \$3,558,738.50 and praying for process of maritime attachment and garnishment against the said Defendant

WHEREAS, this process is issued pursuant to such prayer and requires that a garnishee(s) shall serve their answer(s), together with answers to any interrogatories served with the Complaint, within 25 days after service of process upon him and requires that Defendant shall serve its answer within 30 days after process has been executed, whether by attachment of property or service on the garnishee.

NOW, THEREFORE, we do hereby command you that if the said Defendant cannot be found within the District you attach goods and chattels to the amount sued for, and if such property cannot be found that you attach other property, credit and effects to the amount sued for in the hands of:

ABN Amro, American Express Bank, Bank of America, Bank of New York, Bank of China, BNP Paribas, Barclay's Bank, Citibank, Celyon, Deutsche Bank, HSBC Bank USA Bank, J.P. Morgan Chase, Societe Generale, Standard Chartered Bank, UBS, Wachovia Bank N.A., and/or Fortis Bank

to with property, letters of credit, deposits, funds, credits, bills of lading, debts, settlement agreements, or other assets, tangible or intangible, in whatever form of:

**OMAN INSURANCE CO.**

and that you promptly after execution of this process, file the same in this court with your return thereon.

WITNESS, the Honorable John F. Keenan Judge of said Court, this 1<sup>st</sup> day of August 2008, and of our Independence the two-hundred and thirty-second.

Lennon, Murphy & Lennon, LLC  
Attorneys for Plaintiff  
The Gray Bar Building  
420 Lexington Ave., Suite 300  
New York, NY 10170  
Phone (212) 498-6050

J. MICHAEL McMAHON  
Clerk  
By: B. J. Celi  
Deputy Clerk

NOTE: This Process is issued pursuant to Rule B(1) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure and/or New York Civil Practice Law and Rules, Article 62.



**EXHIBIT C**





ATTORNEYS AT LAW

Lennon,  
Murphy &  
Lennon, LLC

420 Lexington Ave., Suite 300  
New York, NY 10170  
phone (212) 490-6050  
fax (212) 490-6070  
www.lmnmur.com

3rd Floor Landing  
2425 Post Rd, Suite 302  
Southport, CT 06890  
phone (203) 256-8600  
fax (203) 256-8615  
mail@lenmur.com

August 19, 2008

Via Facsimile (212) 710-3950

Clyde & Co. LLP  
405 Lexington Avenue  
New York, NY 10174  
Attn: Christopher Carlsen, Esq.

Re: **Jamie Shipping Inc et al v. Oman Insurance Co.**  
Your ref.: 0705559  
Our ref.: 08-1526

Dear Mr. Carlsen:

Thank you for your letter dated today addressed to Mary Fedorchak of our office. Please be advised that Ms. Fedorchak is our paralegal. All further correspondence on this matter should be directed to the attention of the undersigned and/or Ms. Anne LeVasseur.

We have passed a copy of your letter to our instructing solicitors and will revert to you once we have been instructed. However, please note that Supplemental Rule E(5) does not mandate that a Rule B plaintiff agree to accept a letter of credit as substitute security. Our view of Supplemental Rule E(5) is that in the absence of the parties agreement that only a surety bond may be compelled upon a Rule B plaintiff as substitute security.

Please be advised that our clients' claims are fully secured by way of Oman Insurance Co. property that has been attached in New York. We have issued cease and desist notices to the garnishee banks that have been served with the Ex Parte Order and Process of Maritime Attachment and Garnishment. The banks thus should no longer be screening for transactions or accounts involving Oman Insurance Co. Should you believe that further transactions or accounts are being impacted please let us know and we will take prompt actions to address the same.

Should you wish to discuss this matter please do not hesitate to contact the undersigned.

Kind regards,



Kevin J. Lennon

KJL/bhs



## **EXHIBIT D**





"Rory Butler"  
<Rory.Butler@hfw.com>  
08/13/2008 06:54 PM

To "Mark Beswetherick" <Mark.Beswetherick@clydeco.ae>  
"Alec Emmerson" <Alec.Emmerson@clydeco.ae>, "Brian  
Nash" <Brian.Nash@clydeco.ae>, "Robert Lawrence"  
<Robert.Lawrence@clydeco.ae>, "James Gostling"  
bcc

Subject RE: Canadian Challenger & Agate Islands

History: This message has been forwarded.

Dear Mark

I write further to your e-mail below. I apologise for to the delay in responding. I did indeed receive clients instructions yesterday afternoon but have been tied up on an urgent casualty since then.

Clients position is that a bank guarantee from Mashreq bank is not acceptable to them. Clients would prefer to remain secured via cash funds. It is not uncommon for funds attached in Rule B actions to remain attached and to be held in the US Court Registry. Alternatively clients may be prepared to agree to transfer the funds attached to date and any further funds attached in the future to an escrow account to be set up in London, wording of the escrow agreement to be discussed. This option would have the advantage that the attached funds would earn interest. Please could you advise if this suggestion is of interest to your clients.

For the sake of good order I would note that I understand, as a matter of US law, that clients are not obliged to accept a bank guarantee as alternative security. Further that I believe it will be difficult for your clients to vacate the attachment.

I look forward to hearing from you.

Kind regards

Rory

Rory Butler  
Holman Fenwick Willan  
Direct: +44 (0)20 7264 8310  
Mobile: +44 (0)7766 247848  
[rory.butler@hfw.com](mailto:rory.butler@hfw.com)

From: Mark Beswetherick [mailto:Mark.Beswetherick@clydeco.ae]  
Sent: 13 August 2008 11:16  
To: Rory Butler  
Cc: Alec Emmerson; Brian Nash; Robert Lawrence; Rory Butler  
Subject: Re: Canadian Challenger & Agate Islands

Dear Rory,



Further to my email below, OIC is disappointed not to have yet received a response from your clients to my email dated 11 August setting out OIC's proposal that Mashreq Bank provide a guarantee in return for the release of the Rule B attachment. I understood from our conversation yesterday that a response would be received during the course of the day. As I mentioned to you, OIC wants to resolve this issue as soon as possible, and they are not prepared to let this issue drag on. The proposal of alternative security in the form of a bank guarantee is frankly uncontroversial, and one to which your client should agree (subject only to finalising the wording of Mashreq's guarantee).

In the circumstances, if we do not hear from your clients by 6pm today (UAE time), we anticipate that we will be instructed to issue in the Southern District Court of New York, without further notice to you, a motion to vacate the Rule B attachment, including a request that your clients be required to pay the costs of the motion, and damages. OIC reserves the right to argue that your clients have acted unreasonably by delaying to agree to vacate the Rule B attachment in light of this open offer.

For the avoidance of doubt, OIC also reserves the right to argue, if necessary, in due course that the Rule B attachment should be vacated in any event, regardless of whether alternative security is to be provided.

I look forward to hearing from you as soon as possible.

Yours sincerely,

Mark Beswetherick  
Associate

CLYDE & CO LLP

Dubai Office: PO Box 7001 | Suite 102 | City Tower 2 | Sheikh Zayed Road | Dubai | United Arab Emirates  
Reception: +971 4 331 1102 | Fax: +971 4 331 0920 | Web: [www.clydeco.com](http://www.clydeco.com)

DDI: +971 4 312 8650 | Mobile: +971 50 457 3091 | email: [Mark.Beswetherick@clydeco.ae](mailto:Mark.Beswetherick@clydeco.ae)

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INTERNATIONAL LAW FIRM  
ABU DHABI BELGRADE CARACAS DOHA DUBAI GUILDFORD HONG KONG LONDON MOSCOW NANTES  
NEW YORK PARIS PRINCETON RIO DE JANEIRO SAN FRANCISCO SHANGHAI SINGAPORE ST PETERSBURG

الكلية  
CLYDE & CO

Mark  
Beswetherick/DUBAI/CLYDE  
\_CO

08/11/2008 03:55 PM

To Rory Butler (Holman Fenwick)  
Brian Nash/DUBAI/CLYDE\_CO@CLYDE\_CO, Alec  
cc Emmetson/DUBAI/CLYDE\_CO@CLYDE\_CO, Robert  
Lawrence/DUBAI/CLYDE\_CO@CLYDE\_CO  
Subj Canadian Challenger & Agate Islands  
ed



Dear Rory,

As discussed earlier today, I should be grateful if you would take instructions in principle from your clients on our client's (OIC) proposal to arrange a bank guarantee in return for the release of the Rule B attachment in the US and your clients agreement not to pursue alternative security in respect of the Canadian Challenger or Agate Islands claim in future. Currently, we are only on the court record in respect of the Canadian Challenger matter, but anticipate that we will be instructed shortly on the Agate Islands claim.

As I mentioned, OIC proposes to arrange a guarantee to be provided by the Mashreq Bank, which has a branch office in London. Mashreq will no doubt be familiar to your colleagues in this region, if not also to you. I should be grateful if you would confirm that your clients agree in principle to Mashreq bank acting as the guarantor.

I attach a draft wording for the proposed guarantee. This has not yet been approved by our client (or Mashreq) and may therefore be subject to amendment, but it is in a fairly standard form and, for the sake of expediency, I am forwarding it to you now as our client would like to resolve this matter as soon as possible. No doubt we can discuss any amendments that you or your clients may require in due course, but as a general comment we would prefer to keep the guarantee in as simple terms as possible.

I look forward to hearing from you once you have taken your clients' instructions.

Yours sincerely,

Regards,

Mark Beswetherick  
Associate

## CLYDE & CO LLP

Dubai Office: PO Box 7001 | Suite 102 | City Tower 2 | Sheikh Zayed Road | Dubai | United Arab Emirates  
Reception: +971 4 331 1102 | Fax: +971 4 331 9920 | Web: [www.clydeco.com](http://www.clydeco.com)

DDI: +971 4 312 8650 | Mobile: +971 50 457 3091 | email: [Mark.Beswetherick@clydeco.ae](mailto:Mark.Beswetherick@clydeco.ae)

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INTERNATIONAL LAW FIRM  
ABU DHABI BELGRADE CARACAS DOHA DUBAI GUILDFORD HONGKONG LONDON MOSCOW NANTES  
NEW YORK PARIS PRAXES RIO DE JANEIRO SAN FRANCISCO SHANGHAI SINGAPORE ST PETERSBURG

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CLYDE & CO

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LEGAL NOTICE: This email and any attachments are confidential and may also be



privileged. If you have received this message in error, please (a) notify the sender immediately, (b) destroy this email and any attachments, and (c) do not use, copy, store and/or disclose to any person this email and any attachments. In the event of any technical difficulty with this email and any attachments, please contact the Clyde & Co IT Department on +971 4 331 1102 or email [postmaster@clydeco.ae](mailto:postmaster@clydeco.ae)


---

From 1 September, we will be based in new offices in London. Our new address will be Friary Court, 65 Crutched Friars, London, EC3N 2AE

---

HOLMAN FENWICK WILLAN  
Marlow House  
Lloyds Avenue  
London EC3N 3AL  
T: +44 (0) 20 7488 2300  
F: +44 (0) 20 7481 0316

[hfw.com](http://hfw.com)

[holman.fenwick.willan](http://holman.fenwick.willan) 

A list of partners' names is available at this address. The firm is regulated by the Solicitors Regulation Authority

This e-mail (including all attachments) is intended for the named addressee. It is confidential and may be privileged  
If you have received it in error, please contact us immediately and then delete it. You should not disclose its contents to any other person

This message has been scanned for viruses by BlackSpider MailControl

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## **EXHIBIT E**



US LLP

The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Telephone: 212 710 3900  
Facsimile: 212 710 3950  
www.clydeco.us  
christopher.carlsen@clydeco.us

August 19, 2008

Via facsimile: (212) 490-6070

Mary Fedorchak, Esq.  
Lennon, Murphy & Lennon, LLC  
The Graybar Building  
420 Lexington Avenue, Suite 300  
New York, New York 10170

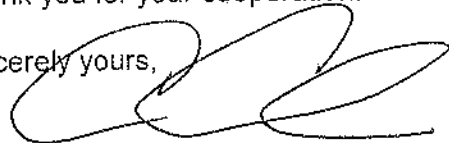
Re: Jamie Shipping Inc. et al v. Oman Insurance Co.  
S.D.N.Y. Docket No. 08 Civ. 6882  
Your File No. 1526-08 SEALED  
Clyde & Co Ref: 0705559

Dear Ms. Fedorchak:

We are working with Clyde & Co's Dubai office in connection with the above-referenced matter. I enclose a copy of the letter sent by our Dubai office today to your office and Holman Fenwick & Willan in which Oman Insurance Company has offered to post security in the form of the enclosed Letter of Credit issued by Mashreq Bank in accordance with Rule E(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Please confirm to me today that your client is willing to accept this Letter of Credit as security for the Ex Parte Order of Maritime Attachment and Garnishment issued in this matter, and release the funds that have been attached to date pursuant to that Order. If you believe that this proffered security is not adequate to protect your client's position, please tell me why to see if we can agree on language that is acceptable to your client. Please advise me of your position today so that, if necessary, we can seek Court involvement immediately in order to prevent further unnecessary disruption to our client's business operations.

Thank you for your cooperation.

Sincerely yours,



Christopher Carlsen

CC/mv

Enclosure

Clyde & Co US LLP is a Delaware limited liability partnership with offices in New York and San Francisco.

Clyde & Co US LLP is affiliated with Clyde & Co, a multinational partnership of lawyers regulated by The Law Society of England & Wales that practices from branch and affiliate\* offices located in: ABU DHABI BELGRADE\* CARACAS DOHA DUBAI GUILDFORD HONG KONG LONDON MOSCOW NANTES PARIS PIRAEUS RIO DE JANEIRO SHANGHAI SINGAPORE ST PETERSBURG\*



CLYDE & CO  
كلويد اند كو ا.د.ا.ب.ي

BY FAX

Holman Fenwick & Willan  
Marlow House Lloyds Avenue  
London  
EC3N 3AL  
United Kingdom  
Fax: +44 20 7481 0316

City Tower 2  
Suite 102  
Sheikh Zayed Road  
Dubai, United Arab Emirates  
PO Box 7001  
Telephone: +971 4 331 1102  
Facsimile: +971 4 331 9920  
Email: mark.beswetherick@clydeco.ae  
www.clydeco.com

Attn: James Gosling & Rory Butler

Lennon, Murphy & Lennon, LLC  
GrayBar Building  
420 Lexington Ave,  
Suite 300  
New York  
NY 10170  
Fax: (212) 490-6070

Our ref  
MB/MRG/0705559/909822.1

Your ref

Date  
19 August 2008

Dear Sirs

**JAMIE SHIPPING INC, BANK MANDIRI (EUROPE) LTD UK, PUFFIN MARINE INVESTMENT SA  
-V- OMAN INSURANCE COMPANY ("OUR CLIENT")**

We refer to Holman Fenwick & Willan's ("HFW") email dated 13 August 2008 (copy attached for ease of reference) in which HFW indicated that its clients are not prepared to accept a bank guarantee from Mashreq Bank ("Mashreq"), but would prefer to remain secured by cash funds.

In our client's view (which we share) that stance is wholly unreasonable and there is no justification for not accepting the proposed guarantee, which provides your client with adequate security in respect of the claims.

We are advised that, contrary to HFW's assertions in the email dated 13 August 2008, the court in New York will vacate the Rule B attachment provided adequate alternative security is offered: in our view it has been. Our client has now sought confirmation from Mashreq on the wording of the guarantee to be offered. We attach the draft approved wording by Mashreq, which is uncontroversial. Mashreq is prepared to issue this as a letter of credit via its New York branch (or if required via its London branch by way of for an equivalent bank guarantee).

If we do not hear from you by 4pm today (UK time) that the above offer is accepted by your client, we will take whatever steps are required to vacate the Rule B attachment without further notice to you. Any applications made will include a request that your clients be ordered to pay the costs on the grounds that they have behaved unreasonably in not accepting the offered guarantee/letter of credit.

INTERNATIONAL LAW FIRM ABU DHABI BELGRADE\* CARACAS DOHA DUBAI GUILDFORD HONG KONG LONDON MOSCOW NANTES NEW YORK  
PARIS PIRAEUS RIO DE JANEIRO SAN FRANCISCO SHANGHAI SINGAPORE ST PETERSBURG\* Clyde & Co LLP offices and associated \* offices

تأليف ت. ك. آ. بي. هي شركة تضامنية ذات مسؤولية محدودة مسجلة في إنجلترا وويلز تحت رقم 00326530 وتتمتع أرففها بحقوق تنظيم المحامين. يمكن الإطلاع على قائمة بأسماء الأعضاء أرففها في مركز التسجيل، لندن، ص 51 إلكترونيًا.  
تأسس HCLM LLP كأحد الأعضاء في شركة تضامنية ذات مسؤولية محدودة في أرففها في إنجلترا وويلز تحت رقم 00326530. A list of members is available for inspection at its registered office 61 Eastcheap, London EC3M 1JP.

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Clyde & Co LLP uses the word "partner" to refer to a member of the LLP, or an employee or consultant with equivalent standing and qualifications. Regulated by the Solicitors Regulation Authority



For the avoidance of doubt, any steps taken in New York to vacate the Rule B Attachment are explicitly without waiver of or prejudice to any rights our client has in respect of the current proceedings in the London High Court (Claim No. Folio 6 of 2008), including the right to apply for an anti-suit injunction.

We look forward to hearing from you by return.

Yours faithfully,

  
Clyde & Co LLP

CC. Christopher Carlson, New York Office



---

MASHREQ BANK LETTER OF CREDIT – TO BE  
HEADED ON NEW YORK BRANCH LETTERHEAD  
– DRAFT

---

TO: JAMIE SHIPPING INC  
BANK MANDIRI (EUROPE) LTD UK  
PUFFIN MARINE INVESTMENT SA

C/O HOLMAN FENWICK & WILLAN  
MARLOW HOUSE  
LLOYD'S AVENUE  
LONDON  
EC3N 3AL

REF: JAMIE SHIPPING INC (1) BANK MANDIRI (EUROPE) LTD (2) UK PUFFIN MARINE INVESTMENT SA (3) V OMAN INSURANCE COMPANY, DOCKET NUMBER: 08CIV.6882 UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

IN CONSIDERATION OF YOUR (1) RELEASING ALL ATTACHMENTS IN WHATSOEVER AMOUNT IN ANY BANKS PURSUANT TO YOUR EX PARTE MARITIME ATTACHMENT AND GARNISHMENT ORDER DATED 3 JULY 2008 ("THE GARNISHMENT ORDER") INCLUDING YOUR ATTACHMENT AT [ ] IN THE SUM OF \$[ ], AND AT [ ], IN THE SUM OF [ ] AND ANY OTHER ATTACHMENTS IN ANY BANK IF ANY,

AND (2) WITHDRAWING THE GARNISHMENT ORDER AGAINST ALL PROPERTY BELONGING TO, CLAIMED BY OR BEING HELD FOR OMAN INSURANCE COMPANY ("OIC") IN AN AMOUNT UP TO AND INCLUDING \$3,558,738.50 (UNITED STATES DOLLARS THREE MILLION, FIVE HUNDRED AND FIFTY EIGHT THOUSAND, SEVEN HUNDRED AND THIRTY EIGHT AND FIFTY CENTS),

AND (3) REFRAINING FROM ATTACHING OR APPLYING TO ATTACH ANY PROPERTY BELONGING TO, CLAIMED BY OR BEING HELD FOR OIC IN ANY JURISDICTION IN ORDER TO OBTAIN FURTHER SECURITY IN RESPECT OF THE LONDON HIGH COURT PROCEEDINGS COMMENCED BY YOU AGAINST OIC UNDER CLAIM NO. 2008 FOLIO 6 ON 4 JANUARY 2008 ARISING FROM THE SINKING OF THE "CANADIAN CHALLENGER" ("THE CANADIAN CHALLENGER CLAIM") OR ANY OTHER PROCEEDINGS ARISING FROM SUCH SINKING, AND/OR ANY PRESENT OR FUTURE PROCEEDINGS ARISING FROM THE SINKING OF THE "AGATE ISLANDS" ("THE AGATE ISLANDS CLAIM"),

;



WE, MASHREQ BANK, WHOSE REGISTERED OFFICE IS [ ], AT THE REQUEST OF AND ON THE ACCOUNT OF OIC, ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [ ] ("THE STANDBY") IN FAVOUR OF: (1) JAMIE SHIPPING INC, (2) BANK MANDIRI (EUROPE) LTD, (3) UK PUFFIN MARINE INVESTMENT SA, FOR AN AMOUNT NOT TO EXCEED AN AGGREGATE TOTAL AMOUNT OF \$3,558,738.50 (UNITED STATES DOLLARS THREE MILLION, FIVE HUNDRED AND FIFTY EIGHT THOUSAND, SEVEN HUNDRED AND THIRTY EIGHT AND FIFTY CENTS) ("THE AGGREGATE TOTAL AMOUNT"),

WE HEREBY UNDERTAKE TO YOU THAT PAYMENT BY US UNDER THIS STANDBY NOT EXCEEDING THE AGGREGATE TOTAL AMOUNT SHALL BE MADE WITHIN 14 BUSINESS DAYS FOLLOWING RECEIPT AT OUR NOMINATED SOLICITORS OFFICE, CLYDE & CO, PO BOX 7001, CITY TOWER 2, SHEIKH ZAYED ROAD, DUBAI, UNITED ARAB EMIRATES, OF THE FOLLOWING DOCUMENTS:

- 1 YOUR SIGHT DRAFT(S) DRAWN ON US OR YOUR WRITTEN PAYMENT DEMAND(S) FOR AN AMOUNT NOT EXCEEDING THE AGGREGATE TOTAL AMOUNT, AND
- 2 A COPY OF A FINAL NON-APPEALABLE JUDGMENT OF THE HIGH COURT IN LONDON IN THE CANADIAN CHALLENGER CLAIM AND/OR THE AGATE ISLANDS CLAIM, DULY CERTIFIED TO BE A TRUE COPY BY YOUR ENGLISH LAWYERS, HOLMAN FENWICK & WILLAN, AND ACCOMPANIED BY THEIR SIGNED AND DATED LETTER, ADDRESSED TO US, CONFIRMING THEREIN THAT THE ATTACHED COPY OF THE JUDGMENT INCLUDES A DIRECTION THAT OIC SHALL MAKE PAYMENT TO (1) JAMIE SHIPPING INC, (2) BANK MANDIRI (EUROPE) LTD, OR (3) UK PUFFIN MARINE INVESTMENT SA, WHICH IS EQUAL TO THE AMOUNT OF THE SIGHT DRAFT(S) DRAWN OR WRITTEN PAYMENT DEMAND MADE UNDER THIS IRREVOCABLE LETTER OF CREDIT BY (1) JAMIE SHIPPING INC, (2) BANK MANDIRI (EUROPE) LTD, OR (3) UK PUFFIN MARINE INVESTMENT SA, AND
- 3 A SIGNED AND DATED LETTER ISSUED BY YOUR ENGLISH LAWYERS, HOLMAN FENWICK & WILLAN ADDRESSED TO US AND CONFIRMING THEREIN THAT THE AMOUNT OF THE SIGHT DRAFT(S) DRAWN OR WRITTEN PAYMENT DEMAND MADE UNDER THIS IRREVOCABLE STANDBY LETTER OF CREDIT BY (1) JAMIE SHIPPING INC, (2) BANK MANDIRI (EUROPE) LTD, OR (3) UK PUFFIN MARINE INVESTMENT SA IS DUE AND PAYABLE TO THEM AND IS EQUAL IN AMOUNT AS MUTUALLY AGREED BETWEEN OIC AND (1) JAMIE SHIPPING INC, (2) BANK MANDIRI (EUROPE) LTD, OR (3) UK PUFFIN MARINE INVESTMENT SA.

PROVIDED ALWAYS THAT OUR LIABILITY HEREUNDER SHALL NOT EXCEED THE SUM OF THE AGGREGATE TOTAL AMOUNT INCLUSIVE OF ANY INTEREST, COSTS AND LEGAL FEES.

THIS IRRECOVABLE STANDBY LETTER OF CREDIT:

(1) IS NOT AN ADMISSION OF LIABILITY AND IS ISSUED WITHOUT WAIVER OF OR PREJUDICE TO ANY RIGHT OR DEFENSE WHICH OIC MAY HAVE ,INCLUDING, BUT



NOT LIMITED TO, ITS RIGHTS AND DEFENSES WITH RESPECT TO THE ALLEGATIONS ASSERTED AGAINST IT IN THE ABOVE REFERENCED PROCEEDINGS FILED IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK AND/OR THE LONDON HIGH COURT, AND ITS RIGHT TO CHALLENGE THE VALIDITY OF THE GARNISHMENT ORDER AND THE ATTACHMENTS, MADE PURSUANT THERETO, AND/OR THE PARTICULAR ELEMENTS AND AMOUNTS OF SECURITY SPECIFIED THEREIN,

(2) IS PERSONAL TO YOU AND MAY NOT BE ASSIGNED, AND

(3) THIS STANDBY SHALL EXPIRE ON [ ] AUGUST 2009 ("THE PRESENT EXPIRY DATE")

IT IS A CONDITION OF THE IRREVOCABLE LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT, FOR ADDITIONAL PERIOD(S) OF ONE YEAR FROM THE PRESENT EXPIRY DATE OR ANY FUTURE EXTENDED EXPIRATION DATE, UNLESS WE NOTIFY YOU IN WRITING, NOT LESS THAN 30 DAYS PRIOR TO ANY SUCH EXPIRATION DATE THAT WE HAVE ELECTED NOT TO EXTEND SUCH EXPIRATION DATE FOR SUCH ADDITIONAL PERIOD. UPON RECEIPT BY YOU OF SUCH NOTICE, YOU MAY DRAW HEREUNDER FOR AN AMOUNT NOT EXCEEDING THE THEN UNUSED BALANCE OF THIS STANDBY BY YOUR WRITTEN STATEMENT QUOTING OUR STANDBY NUMBER AND STATING THAT THE FUNDS WILL BE RETAINED AND USED BY YOU TO MEET ANY OF THE OBLIGATION(S) OF OIC AND, FURTHER, THAT IN THE EVENT THE OBLIGATION(S) ARE SATISFIED, YOU WILL REFUND TO US THE RESIDUAL UNUSED BALANCE OF THE AMOUNT PAID BY US TO YOU HEREUNDER.

THIS STANDBY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH ENGLISH LAW AND ANY DISPUTE ARISING HEREUNDER SHALL BE SUBMITTED TO THE EXCLUSIVE JURISDICTION OF THE ENGLISH HIGH COURT OF JUSTICE.

AUTHORISED SIGNATORY: .....

DATED: .....



\*\*\* TX REPORT \*\*\*  
\*\*\*\*\*

TRANSMISSION OK

TX/RX NO	1006
RECIPIENT ADDRESS	812124906070
DESTINATION ID	
ST. TIME	08/19 09:32
TIME USE	01'22
PAGES SENT	10
RESULT	OK

## CLYDE & Co

US LLP

The Chrysler Building  
405 Lexington Avenue  
New York, New York 10174  
Telephone: 212 710 3900  
Facsimile: 212 710 3950

[www.clydeco.us](http://www.clydeco.us)  
[christopher.carlsen@clydeco.us](mailto:christopher.carlsen@clydeco.us)

August 19, 2008

Via facsimile: (212) 490-6070

Mary Fedorchak, Esq.  
Lennon, Murphy & Lennon, LLC  
The Graybar Building  
420 Lexington Avenue, Suite 300  
New York, New York 10170

Re: Jamie Shipping Inc. et al v. Oman Insurance Co.  
S.D.N.Y. Docket No. 08 Civ. 6882  
Your File No. 1526-08 SEALED  
Clyde & Co Ref: 0705559

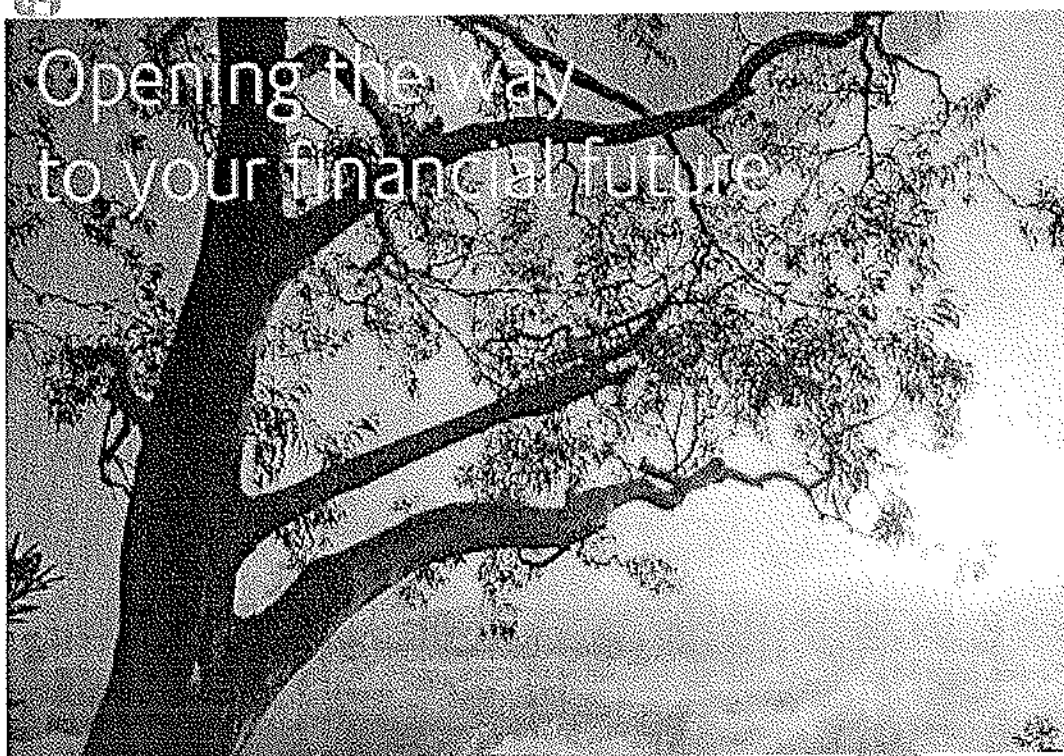
Dear Ms. Fedorchak:

We are working with Clyde & Co's Dubai office in connection with the above-referenced matter. I enclose a copy of the letter sent by our Dubai office today to your office and Holman Fenwick & Willan in which Oman Insurance Company has offered to post security in the form of the enclosed Letter of Credit issued by Mashreq Bank in accordance with Rule E(5) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. Please confirm to me today that your client is willing to accept this Letter of Credit as security for the Ex Parte Order of Maritime Attachment and Garnishment issued in this matter, and release the funds that have been attached to date pursuant to that Order. If you believe that this proffered security is not adequate to protect your client's position, please tell me why to see if we can agree on language that is acceptable to your client. Please advise me of your position today so that, if necessary, we can seek Court involvement immediately in order to prevent further unnecessary disruption to our client's business operations.



## **EXHIBIT F**





Introducing  
**On Arrival**

The credit card that  
UAE talking...

Settle in faster with  
'On Arrival' Package  
Mashreq reports  
half year results

An employment for  
nationals...



**Winning Weekends**  
with all your Mashreq Credit  
Cards  
[Learn more >](#)



**MashreqMillionaire**  
What would you do with AED  
4,000,000?  
[Learn more >](#)



[About Us > Overview](#)

## Welcome to Mashreq

Mashreq has provided banking and financial services to millions of customers and businesses since 1967.

We are the largest private bank in the United Arab Emirates (UAE) with a growing retail presence in the region including Qatar and Bahrain.

We focus on providing our

customers access to a wide range of innovative products and services.

Mashreq is invariably among the highest performing banks in the region. Last year we recorded a Net Profit of over US\$517 million from a Total Operating Income of \$1,048 million. At the end of last year our Total Assets stood at \$23.8 billion.

Our branch network extends across the UAE with one in every two households in the UAE banking with us. We also have customer service centres in key retail locations and one of the largest ATM networks in the country. We also have 12 overseas offices in nine countries, including Europe, US, Asia and Africa.

### Vision

To offer our customers the most rewarding banking relationships, financially and personally.

[Read more >](#)

### Organisation & Affiliates

At Mashreq, our board comprises seven Directors. All of them are highly respected business leaders.

[Read more >](#)

### History

Celebrating our 40th anniversary in May 2007, we have grown to its current position as the largest private bank in the UAE.

[Read more >](#)

### Financials

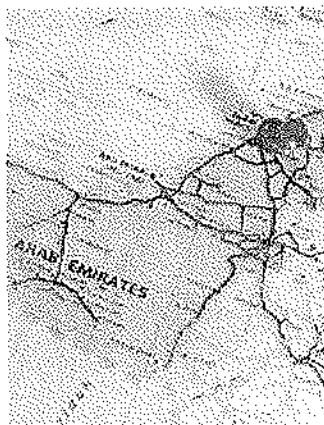
Mashreq has a track record of healthy, consistent

[Read more >](#)





Locations &gt; Overview



## Location Finder

Mashreq has one of the largest branch and ATM networks in the UAE as well as overseas offices in 11 countries and expanding operations across the GCC including Qatar, Bahrain and Egypt. Use the form below to find the location that is right for you.

Location Type *	Branch
Country *	United States of America
<input type="button" value="Submit"/>	

### New York Branch (Exclusive Correspondent Banking Branch)

Address	50 Broadway Suite 1500, New York, NY 10004, USA
Telephone	+212 5458200
Fax	+212 5450918

#### New Branches - Dubai

Jumeirah Beach Residences

Park Place

Abu Hail

Karama

#### New Branches - Abu Dhabi

Muroor II

Najdah

#### New Branches - Al Ain

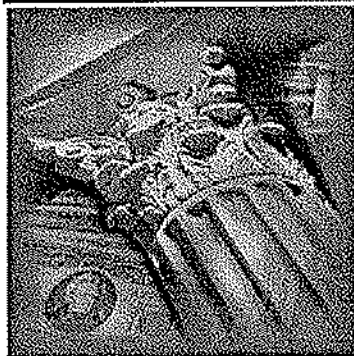
Muwaiji





# State of New York Banking Department

Institutions We Supervise  
Foreign Branches  
As of August 18, 2008



Allied Irish Banks, p.l.c.  
405 Park Avenue  
New York, NY 10022 4481

ABN AMRO Bank N.V.  
55 East 52nd Street  
New York, NY 10055 0002

Banca Monte dei Paschi di Siena S.p.A.  
55 East 59th Street  
New York, NY 10022 1112

Banco de La Nacion Argentina  
225 Park Avenue  
New York, NY 10169 0002

Banco do Brasil, S.A.  
600 Fifth Avenue  
New York, NY 10020 2302

Banco Bilbao Vizcaya Argentaria, S.A.  
1345 Avenue of the Americas  
New York, NY 10105 0302

Banco Del Estado de Chile  
400 Park Avenue  
New York, NY 10022 9464  
Mail To : 400 Park Avenue, 22nd Floor  
New York, NY 10022 9464

Banco Espanol de Credito, S.A.  
730 Fifth Avenue  
New York, NY 10019 0001

Banco Espirito Santo, S.A.  
320 Park Avenue  
New York, NY 10022 6815

Banco Itau, S.A.  
540 Madison Avenue  
New York, NY 10022 3265  
Mail To : 540 Madison Avenue 24th Floor  
New York, NY 10022 3265

Banco Popular de Puerto Rico  
5 West 51st Street  
New York, NY 10019 6901

Banco Santander, S.A.  
45 East 53rd Street  
New York, NY 10022 4604

Bank of Baroda  
One Park Avenue



New York, NY 10016 5802

Bank of India  
277 Park Avenue  
New York, NY 10172 0001

Bank of Montreal  
3 Times Square  
New York, NY 10036 6520

Bank of Tokyo - Mitsubishi UFJ, Ltd.,  
The  
1251 Avenue of the Americas, 14th Floor  
New York, NY 10020 1104

Bank Hapoalim B.M.  
1177 Avenue of the Americas  
New York, NY 10036 2790  
Mail To : 1177 Avenue of the Americas  
12th and 14th Floors  
New York, NY 10036 2790

Barclays Bank PLC  
200 Park Avenue  
New York, NY 10166 0398

Bayerische Hypo-und Vereinsbank  
Aktiengesellschaft  
150 East 42nd Street  
New York, NY 10017 5612

BNP Paribas  
787 7th Avenue  
New York, NY 10019 6083

Caixa Geral de Depositos, S.A.  
280 Park Avenue, 28th Floor  
(East Building)  
New York, NY 10017 1216

Calyon  
1301 Avenue of the Americas  
New York, NY 10019 6022

Chang Hwa Commercial Bank, Ltd.  
685 Third Avenue  
New York, NY 10017 4024

Chiba Bank, Ltd., The  
1133 Avenue of the Americas (15th Floor)  
New York, NY 10036 6710

China Merchants Bank Co., LTD  
509 Madison Avenue  
New York, NY 10022

Chinatrust Commercial Bank, Ltd.  
366 Madison Avenue  
New York, NY 10017 7110  
Mail To : 366 Madison Avenue, 3rd floor



New York, NY 10017 7110

Commerzbank Aktiengesellschaft  
Two World Financial Center  
New York, NY 10281 3204  
Mail To : 2 World Financial Center, 33rd Floor  
New York, NY 10281 3204

Cooperatieve Centrale Raiffeisen-Boeren  
Leenbank B.A., Rabobank Nederland  
245 Park Avenue  
New York, NY 10167 0062

Credit Industriel et Commercial  
520 Madison Avenue  
New York, NY 10022 4213  
Mail To : 520 Madison Ave. 37th floor  
New York, NY 10022 4213

Credit Suisse  
11 Madison Avenue  
New York, NY 10010 3698

Depfa Bank plc  
623 Fifth Avenue, 22nd floor  
New York, NY 10022 6842

Deutsche Bank AG  
60 Wall Street  
New York, NY 10005 2858  
Mail To : 60 Wall Street, 46th Floor  
Mail Stop NYC60-4601  
New York, NY 10005 2858

Dexia Credit Local S.A.  
445 Park Avenue  
New York, NY 10022 2606

DnB NOR Bank ASA  
200 Park Avenue  
New York, NY 10022 0396  
Mail To : 200 Park Avenue (31st Floor)  
New York, NY 10166 0396

Dresdner Bank AG  
1301 Avenue of the Americas  
New York, NY 10019 6163

DZ Bank AG Deutsche  
Zentral-Genossenschaftsbank  
609 Fifth Avenue  
New York, NY 10017 1021

Eurohypo Aktiengesellschaft  
1114 Avenue of the Americas  
New York, NY 10036 7703

Fortis Bank S.A./N.V.  
520 Madison Avenue  
New York, NY 10022 4213



Gunma Bank, Ltd., The  
780 Third Avenue  
New York, NY 10017 2024  
Mail To : 780 Third Avenue,  
6th Floor  
New York, NY 10017 2024

Habib Bank Limited  
60 East 42nd Street  
New York, NY 10165 0006  
Mail To : 60 East 42nd Street  
New York, NY 10165 0006

HSH Nordbank AG  
230 Park Avenue  
New York, NY 10169 0005  
Mail To : 230 Park Avenue  
New York, NY 10169 0005

Industrial Bank of Korea  
1250 Broadway  
New York, NY 10001 3798  
Mail To : 1250 Broadway, 37th Fl.  
New York, NY 10001

Intesa Sanpaolo S.p.A.  
1 William Street  
New York, NY 10004 2595

Kookmin Bank  
565 Fifth Avenue  
New York, NY 10017 2466  
Mail To : 565 Fifth Avenue, 24th floor  
New York, NY 10017 2466

Korea Development Bank, The  
320 Park Avenue  
New York, NY 10022 6815  
Mail To : 320 Park Avenue, 32nd Floor  
New York, NY 10022 6815

KBC Bank N.V.  
1177 Avenue of the Americas  
New York, NY 10036 2714  
Mail To : 1177 Avenue of the Americas  
New York, NY 10036 2714

Landesbank Baden - Wurttemberg  
280 Park Avenue  
New York, NY 10017 1244  
Mail To : 280 Park Avenue,  
31st Floor-West Building  
New York, NY 10017 1244

Landesbank Hessen - Thuringen  
Girozentrale  
420 Fifth Avenue  
New York, NY 10018 2712



Lloyds TSB Bank plc  
1251 Avenue of the Americas  
New York, NY 10020 1104  
Mail To : 1251 Avenue of the Americas  
39th Floor  
New York, NY 10020 1104

Malayan Banking Berhad  
400 Park Avenue  
New York, NY 10022 4406  
Mail To : 400 Park Ave, 9th floor  
New York, NY 10022 4406

Mashreq Bank psc  
50 Broadway  
New York, NY 10004 6516  
Mail To : 50 Broadway  
Suite 1500  
New York, NY 10004

Mega International Commercial Bank Co.,  
Ltd  
59-65 Liberty Street  
New York, NY 10005 1018  
Mail To : 65 Liberty Street  
New York, NY 10005 1018

Mitsubishi UFJ Trust and Banking  
Corporation  
520 Madison Avenue (39th Floor)  
New York, NY 10022 4324

Mizuho Corporate Bank, Ltd.  
1251 Avenue of the Americas  
New York, NY 10020 1183

National Bank of Canada  
65 East 55th Street  
New York, NY 10022 3219

National Bank of Egypt  
40 East 52nd Street  
New York, NY 10022 5911

National Bank of Pakistan  
100 Wall Street, 21st Floor  
New York, NY 10005 3701

Natixis  
1251 Avenue of the Americas  
New York, NY 10020 0070  
Mail To : 1251 Avenue of the Americas, 34th Floor  
New York, NY 10020 0070

Norddeutsche Landesbank Girozentrale  
1114 Avenue of the Americas, 37th Floor  
New York, NY 10036 7703

Nordea Bank Finland Plc  
437 Madison Avenue



New York, NY 10022 7001

Nordea Bank Norge ASA  
437 Madison Avenue  
New York, NY 10022 7001

Norinchukin Bank, The  
245 Park Avenue  
New York, NY 10167 0104  
Mail To : 245 Park Avenue, 21st Floor  
New York,, NY 10167 0104

Philippine National Bank  
30 Broad Street  
New York, NY 10004  
Mail To : 30 Broad Street, 36th Floor  
New York, NY 10004

Royal Bank of Scotland plc, The  
101 Park Avenue, 10th & 11th Floor  
New York, NY 10178 1199  
Mail To : 101 Park Avenue  
10th Floor  
New York, NY 10178 1199

Shinhan Bank  
600 Third Avenue  
New York, NY 10016  
Mail To : 600 Third Ave. 17th Floor  
New York, NY 10016

Shinkin Central Bank  
114 West 47th Street  
New York, NY 10036 1510

Shoko Chukin Bank, The  
666 Fifth Avenue  
New York, NY 10103 0905  
Mail To : 666 Fifth Ave., 14th Floor  
New York,, NY 10103 0905

Skandinaviska Enskilda Banken  
245 Park Avenue  
New York, NY 10167 0061

Societe Generale  
1221 Avenue of the Americas  
New York, NY 10020 1092

Standard Chartered Bank  
One Madison Avenue  
New York, NY 10010 3666

State Bank of India  
460 Park Avenue  
New York, NY 10022 1972  
Mail To : 460 Park Avenue, Second Floor  
New York, NY 10022 1972

Sumitomo Mitsui Banking Corporation



277 Park Avenue  
New York, NY 10172 0601  
Mail To : 277 Park Ave., 6th Flr  
New York, NY 10172 0601

Sumitomo Trust and Banking Company  
Limited, The  
527 Madison Avenue (3rd Floor)  
New York, NY 10022 4396

Svenska Handelsbanken AB  
875 Third Avenue  
New York, NY 10022 6225

Swedbank AB  
One Penn Plaza  
New York, NY 10119 0002  
Mail To : One Penn Plaza, 15th Flr.  
New York, NY 10119 0002

T.C. Ziraat Bankasi  
122 East 42 Street  
New York, NY 10168  
Mail To : 122 E. 42nd Street, Suite 310  
New York, NY 10168

Toronto-Dominion Bank, The  
31 West 52nd Street  
New York, NY 10019 6101

Turkiye Vakiflar Bankasi T.A.O.  
680 Fifth Avenue  
New York, NY 10019 5429  
Mail To : 680 Fifth Avenue, 23rd Floor  
New York, NY 10019 5429

United Bank Limited  
80 Broad Street  
New York, NY 10004 2209  
Mail To : 80 Broad St., 24th Floor  
New York, NY 10004 2209

UniCredit Banca di Roma, S.p.A.  
34 East 51st Street  
New York, NY 10022 6898

UniCredito Italiano S.p.A.  
150 East 42nd Street  
29th and 32nd Floors  
New York, NY 10017 5632

WestLB AG  
1211 Avenue of the Americas  
New York, NY 10036 8801

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## **EXHIBIT G**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JAMIE SHIPPING INC., PUFFIN MARINE  
INVESTMENTS SA and BANK MANDIRI  
(EUROPE) LTD., UK,

Case No.: 08 CV 6882(JFK)

Plaintiffs,

- against -

OMAN INSURANCE COMPANY,

Defendant.  
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### ORDER

A motion having been made by Defendant to compel Plaintiffs, pursuant to Rule E(5)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions to the Federal Rules of Civil Procedure, to accept an irrevocable letter of credit issued by Mashreq Bank as substitute security for \$3,558,738.50 in funds attached by Plaintiffs pursuant to the *Ex Parte* Order of Maritime Attachment and Garnishment issued by this Court on July 31, 2008 ("Attachment Order"), and after due consideration of the parties' motion papers and the arguments of counsel:

It is hereby Ordered, Adjudged and Decreed:

1. That the proffered irrevocable letter of credit to be issued by Mashreq Bank is hereby approved by the Court, pursuant to Rule E(5)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, as substitute security for the \$3,558,738.50 attached pursuant to the Attachment Order;

2. That the maritime attachment of the Defendant's property in the hands of various garnishees in the within proceeding hereby be dissolved and vacated, and all garnishees holding



property belonging to the Defendant named in this action shall immediately release from attachment all property belonging to the Defendant restrained pursuant to this Court's Attachment Order; and

3. That this case shall proceed in ordinary course.

Dated: August 29, 2008  
New York, New York

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Hon. John F. Keenan  
United States District Judge




**AFFIDAVIT OF SERVICE BY HAND**

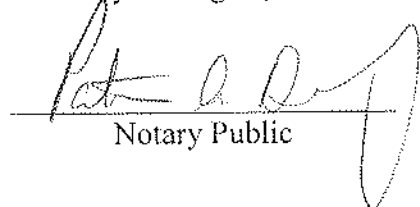
STATE OF NEW YORK     )  
                                      ) ss.:  
COUNTY OF NEW YORK )

Kumar Rajh, being duly sworn, deposes and says that deponent is not a party of this action, is over 18 years of age and resides in South Richmond Hill, New York. On August 22, 2008 deponent served the within **ORDER TO SHOW CAUSE** by hand upon:

Kevin J. Lennon, Esq.  
Lennon, Murphy & Lennon  
420 Lexington Avenue, Suite 300  
New York, New York 10170

  
Kumar Rajh

Sworn to before me this  
22nd day of August, 2008

  
Notary Public

PATRICIA A. DONNELLY  
Notary Public, State of New York  
No. 01DO5087441  
Qualified in New York County  
Commission Expires Nov. 30, 2009